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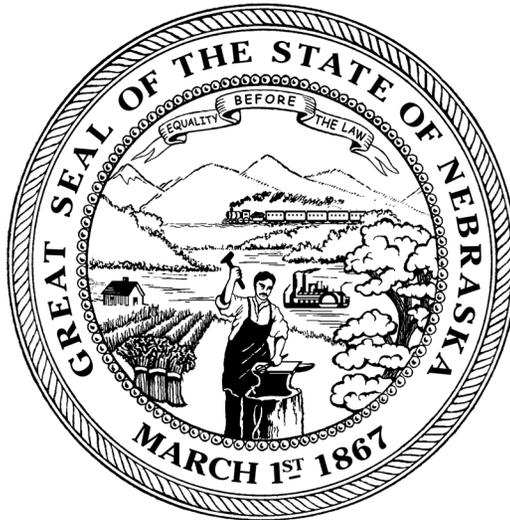
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Revisor of Statutes

For the benefit of the
State of Nebraska

CHAPTER 39

HIGHWAYS AND BRIDGES

Article.

- 13. State Highways.
 - (e) Land Acquisition. 39-1320.
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- 16. County Roads. Road Improvement Districts.
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ARTICLE 13

STATE HIGHWAYS

(e) LAND ACQUISITION

Section.

39-1320. State highway purposes; acquisition of property; eminent domain; purposes enumerated.

(j) MISCELLANEOUS

39-1359.01. Rights-of-way; mowing and harvesting of hay; permit; fee; department; powers and duties.

(e) LAND ACQUISITION

39-1320 State highway purposes; acquisition of property; eminent domain; purposes enumerated. (1) The Department of Roads is hereby authorized to acquire, either temporarily or permanently, lands, real or personal property or any interests therein, or any easements deemed to be necessary or desirable for present or future state highway purposes by gift, agreement, purchase, exchange, condemnation, or otherwise. Such lands or real property may be acquired in fee simple or in any lesser estate. It is the intention of the Legislature that all property leased or purchased from the owner shall receive a fair price.

(2) State highway purposes, as referred to in subsection (1) of this section or otherwise in sections 39-1301 to 39-1362, shall include provision for, but shall not be limited to, the following:

(a) The construction, reconstruction, relocation, improvement, and maintenance of the state highway system. The right-of-way for such highways shall be of such width as is deemed necessary by the department;

(b) Adequate drainage in connection with any highway, cuts, fills, or channel changes and the maintenance thereof;

(c) Controlled-access facilities, including air, light, view, and frontage and service roads to highways;

(d) Weighing stations, shops, storage buildings and yards, and road maintenance or construction sites;

(e) Road material sites, sites for the manufacture of road materials, and access roads to such sites;

(f) The preservation of objects of attraction or scenic value adjacent to, along, or in close proximity to highways and the culture of trees and flora which may increase the scenic beauty of such highways;

(g) Roadside areas or parks adjacent to or near any highway;

(h) The exchange of property for other property to be used for rights-of-way or other purposes set forth in subsection (1) or (2) of this section if the interests of the state will be served and acquisition costs thereby reduced;

(i) The maintenance of an unobstructed view of any portion of a highway so as to promote the safety of the traveling public;

(j) The construction and maintenance of stock trails and cattle passes;

(k) The erection and maintenance of marking and warning signs and traffic signals;

(l) The construction and maintenance of sidewalks and highway illumination;

(m) The control of outdoor advertising which is visible from the nearest edge of the right-of-way of the Highway Beautification Control System as defined in section 39-201.01 to comply with the provisions of 23 U.S.C. 131, as amended;

(n) The relocation of or giving assistance in the relocation of individuals, families, businesses, or farm operations occupying premises acquired for state highway or federal-aid road purposes; and

(o) The establishment and maintenance of wetlands to replace or to mitigate damage to wetlands affected by highway construction, reconstruction, or maintenance. The replacement lands shall be capable of being used to create wetlands comparable to the wetlands area affected. The area of the replacement lands may exceed the wetlands area affected. Lands may be acquired to establish a large or composite wetlands area, sometimes called a wetlands bank, not larger than an area which is one hundred fifty percent of the lands reasonably expected to be necessary for the mitigation of future impact on wetlands brought about by highway construction, reconstruction, or maintenance during the six-year plan as required by sections 39-2115 to 39-2117, an annual plan under section 39-2119, or an annual metropolitan transportation improvement program under section 39-2119.01 in effect upon acquisition of the lands. For purposes of this section, wetlands shall have the definition found in 33 C.F.R. 328.3(b).

(3) The procedure to condemn property authorized by subsection (1) of this section or elsewhere in sections 39-1301 to 39-1362 shall be exercised in the manner set forth in sections 76-704 to 76-724 or as provided by section 39-1323, as the case may be.

Source: Laws 1955, c. 148, § 20, p. 425; Laws 1961, c. 195, § 1, p. 594; Laws 1969, c. 329, § 2, p. 1178; Laws 1972, LB 1181, § 3; Laws 1975, LB 213, § 5; Laws 1992, LB 899, § 1; Laws 1992, LB 1241, § 3; Laws 1993, LB 15, § 7; Laws 1995, LB 264, § 23; Laws 2007, LB277, § 1.
Effective date September 1, 2007.

Cross Reference

Advertising and informational signs along highways and roads, see sections 39-201.01 to 39-226.

Outdoor advertising signs, removal, see sections 69-1701 and 69-1702.

Outdoor advertising signs, displays, and devices, rules and regulations of the Department of Roads, see section 39-102.

(j) MISCELLANEOUS

39-1359.01 Rights-of-way; mowing and harvesting of hay; permit; fee; department; powers and duties. For purposes of this section, the definitions in section 39-1302 apply.

The Department of Roads shall issue permits which authorize and regulate the mowing and harvesting of hay on the right-of-way of highways of the state highway system. The applicant for a permit shall be informed in writing and shall sign a release acknowledging (1) that he or she will assume all risk and liability for hay quality and for any accidents and damages that may occur as a result of the work and (2) that the State of Nebraska assumes no liability for the hay quality or for work done by the permittee. The applicant shall show proof of liability insurance of at least one million dollars. The owner or the owner's assignee of land abutting the right-of-way shall have priority to receive a permit for such land under this section until July 30 of each year. Applicants who are not owners of abutting land shall be limited to a permit for five miles of right-of-way per year. The department shall allow mowing and hay harvesting on or after July 15 of every other year unless haying was completed the year prior due to drought or other declaration. The department shall charge a permit fee in an amount calculated to defray the costs of administering this section. All fees received under this section shall be remitted to the State Treasurer for credit to the Highway Cash Fund. The department shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2007, LB43, § 1.
Effective date September 1, 2007.

ARTICLE 16

COUNTY ROADS. ROAD IMPROVEMENT DISTRICTS

(a) SPECIAL IMPROVEMENT DISTRICTS

Section.

- 39-1601. Special improvement districts; petition for organization; dissolution; procedure; disposition of funds.
- 39-1605. Organization; special election; ballot form; first board of trustees.
- 39-1606. Board of trustees; members; election; filing fee; term; compensation; district; name.
- 39-1607. Trustees; failure to qualify; vacancy; how filled.

(a) SPECIAL IMPROVEMENT DISTRICTS

39-1601 Special improvement districts; petition for organization; dissolution; procedure; disposition of funds. (1) Whenever a petition, (a) containing a definite description of the territory to be embraced, (b) designating the name of the proposed district, and (c) signed by ten percent of the landowners within the limits of a proposed road improvement district is presented and filed with the county board of the county in which the greater portion of the area of the proposed district is located, the county board of any such county shall cause the question to be submitted to the legal voters of such proposed road improvement district as provided in section 39-1605. If fifty-five percent of those voting on the question are in favor of the proposition, the district shall be organized. No lands included within any municipal corporation shall be included in any road improvement district.

(2) Any road improvement district can be dissolved, if there are no outstanding debts, by the board of trustees of any such district, on its own motion or on the request in writing of ten electors, submitting at a special election, after due notice by publication in the manner provided for in subsection (1) of section 39-1604, the question of dissolution of the road improvement district. The special election shall be conducted by mail as provided in sections 32-953 to 32-959. If fifty-one percent of the votes cast on the question at such election are in favor of such dissolution, the board of trustees shall cause a record of such election and the vote thereon to be made in the office of the county clerk in the county in which the election was held to create the district, and the district shall thereupon stand dissolved. An election shall not be required for the dissolution of the district if a petition requesting the district be dissolved, signed by fifty percent of the owners of property located within the district, is presented to the county board of the county. The county board shall determine the sufficiency of the petition and dissolve the district by an order of such board.

(3) In case a district is dissolved pursuant to this section, the funds on hand or to be collected shall be held by the county treasurer in a separate fund, and the trustees of the district shall petition the district court of the county in which the election to form the district was held, for an order approving the distribution of funds to the landowners or easement owners as a dividend on the same basis as collected.

Source: Laws 1957, c. 155, art. III, § 1, p. 523; Laws 2007, LB248, § 1.
Operative date January 1, 2008.

39-1605 Organization; special election; ballot form; first board of trustees. After the determination by the county board, or a majority thereof, as provided by subsection (2) of section 39-1604, it shall call a special election and submit to the legal voters of the proposed road improvement district the question of the organization of such district and the election of a board of trustees who shall be resident taxpayers. Notice of such election shall be given as provided in subsection (1) of section 39-1604. At such election each legal voter resident within the proposed road improvement district shall have a right to cast a ballot with the words thereon, For road improvement district, or Against road improvement district. The special election shall be conducted by mail as provided in sections 32-953 to 32-959. The result of

such election shall be entered of record. If fifty-five percent of the votes cast are in favor of the proposed district, such proposed district shall be deemed an organized road improvement district. At the same election there shall be elected three members of a board of trustees. Such members so elected shall be the first board of trustees of such district if the formation of the district is so approved at such election. Such board of trustees shall hold office until their successors are elected and qualified under the provisions of section 39-1606. It shall elect a president and clerk substantially as is provided for in sections 39-1606 and 39-1609.

Source: Laws 1957, c. 155, art. III, § 5, p. 526; Laws 2007, LB248, § 2.
Operative date January 1, 2008.

39-1606 Board of trustees; members; election; filing fee; term; compensation; district; name. (1) Any resident property owner desiring to file for the office of trustee of a road improvement district may file for such office with the county clerk or election commissioner of the county in which the greater proportion in area of the district is located, not later than forty-five days before the election, by paying a filing fee of five dollars.

(2)(a) The term of office of every member of a board of trustees of a road improvement district existing on January 1, 2008, shall be extended to the first Monday in October following the expiration of the original term. Their successors shall be elected for terms of six years at elections held on the first Tuesday after the second Monday in September of odd-numbered years. The term of office shall begin on the first Monday in October after the election.

(b) The successors to the initial board of trustees of a road improvement district shall be elected on the first Tuesday after the second Monday in September of the first odd-numbered year which is at least fifteen months after the organization of the district pursuant to section 39-1605. One trustee shall be elected for a term of two years, one trustee for a term of four years, and one trustee for a term of six years, and thereafter their respective successors shall be elected for terms of six years at succeeding elections held on the first Tuesday after the second Monday in September of odd-numbered years. The term of office shall begin on the first Monday in October after the election.

(c) Elections under this subsection shall be conducted by mail as provided in sections 32-953 to 32-959.

(3) At the first meeting of the trustees of such district after the election of one or more members, the board shall elect one of their number president. Such district shall be a body corporate and politic by name of Road Improvement District No. of County or Counties, as the case may be, with power to sue, be sued, contract, acquire and hold property, and adopt a common seal. Each trustee shall receive as his or her salary the sum of five dollars for each meeting.

Source: Laws 1957, c. 155, art. III, § 6, p. 527; Laws 1994, LB 76, § 552; Laws 2007, LB248, § 3.
Operative date January 1, 2008.

39-1607 Trustees; failure to qualify; vacancy; how filled. If any trustee fails to qualify within sixty days after receipt of the certificate of election, the office to which he or she was elected shall be declared vacant. Any vacancy in the board of trustees from any cause

may be filled by the remaining trustees until the next election pursuant to section 39-1606. At such election a trustee shall be elected by the voters of the district for the balance of the unexpired term of such trustee, if any.

Source: Laws 1957, c. 155, art. III, § 7, p. 528; Laws 2007, LB248, § 4.
Operative date January 1, 2008.

ARTICLE 21

FUNCTIONAL CLASSIFICATION

Section.

- 39-2116. Board of Public Roads Classifications and Standards; review of plans and programs; recommendations.
- 39-2119. Counties and municipalities; plan or program for specific improvements; file annually with Board of Public Roads Classifications and Standards; hearing; notice; adoption; review; failure to file; penalty; funds placed in escrow.
- 39-2119.01. County or municipality; use of annual metropolitan transportation improvement program as alternate submission authorized.
- 39-2124. Legislative intent.
- 39-2125. Sections, how construed.

39-2116 Board of Public Roads Classifications and Standards; review of plans and programs; recommendations. The Board of Public Roads Classifications and Standards shall review all six-year plans required by sections 39-2115 to 39-2117 or annual metropolitan transportation improvement programs under section 39-2119.01 submitted to it and make such recommendations for changes therein as it believes necessary or desirable in order to achieve the orderly development of an integrated system of highways, roads, and streets, but in so doing the board shall take into account the fact that individual priorities of needs may not lend themselves to immediate integration. The department and each county and municipality shall give careful and serious consideration to any such recommendations received from the board and shall not reject them except for substantial or compelling reason.

Source: Laws 1969, c. 312, § 16, p. 1125; Laws 1971, LB 100, § 5; Laws 2007, LB277, § 2.
Effective date September 1, 2007.

39-2119 Counties and municipalities; plan or program for specific improvements; file annually with Board of Public Roads Classifications and Standards; hearing; notice; adoption; review; failure to file; penalty; funds placed in escrow. Each county and municipality shall annually prepare and file, under sections 39-2115 to 39-2117 or 39-2119.01, with the Board of Public Roads Classifications and Standards, a plan or program for specific road or street improvements for the current year. The annual plan or program shall be filed on or before March 1 of each year. No such plan or program shall be adopted until after a local public hearing thereon and its approval by the local governing body. The board shall prescribe the nature and time of notice of such hearing, which shall be such as shall be likely to come to the attention of interested citizens in the jurisdiction involved. The board shall

review each such annual plan or program within sixty days after it has been filed to determine whether it is consistent with the county's or municipality's current six-year plan. The county or municipality shall be required to justify any inconsistency with the six-year plan to the satisfaction of the board. If any county or municipality shall fail to comply with the provisions of this section, the board shall so notify the local governing board, the Governor, and the State Treasurer, who shall suspend distribution of any highway-user revenue allocated to such county or municipality until there has been compliance. Such funds shall be held in escrow for six months until the county or municipality complies. If the county or municipality complies within the six-month period it shall receive the money in escrow, but after six months, if the county or municipality fails to comply, the money in the escrow account shall be lost to the county or municipality.

Any county or municipality on a fiscal construction year basis may apply to the Board of Public Roads Classifications and Standards for a new anniversary date. The board may grant a new anniversary date, but such date shall not be later than July 1.

Source: Laws 1969, c. 312, § 19, p. 1126; Laws 1971, LB 100, § 8; Laws 1973, LB 137, § 2; Laws 1976, LB 724, § 5; Laws 2007, LB277, § 3.
Effective date September 1, 2007.

39-2119.01 County or municipality; use of annual metropolitan transportation improvement program as alternate submission authorized. Any county or municipality that is designated as a metropolitan planning organization pursuant to 23 U.S.C. 134(d), as such section existed on January 1, 2007, may, in lieu of submission of a six-year plan under sections 39-2115 to 39-2117 or an annual plan under section 39-2119, submit an annual metropolitan transportation improvement program pursuant to section 23 U.S.C. 134(j), as such section existed on January 1, 2007, that is treated as such plans required under sections 39-2115 to 39-2117 and 39-2119.

Source: Laws 2007, LB277, § 4.
Effective date September 1, 2007.

39-2124 Legislative intent. It is the intent of the Legislature to recognize the responsibilities of the Department of Roads, of the counties, and of the municipalities in their planning programs as authorized by state law and by home rule charter and to encourage the acceptance and implementation of comprehensive, continuing, cooperative, and coordinated planning by the state, the counties, and the municipalities. Sections 13-914 and 39-2101 to 39-2125 are not intended to prohibit or inhibit the actions of the counties and of the municipalities in their planning programs and their subdivision regulations, nor are sections 13-914 and 39-2101 to 39-2125 intended to restrict the actions of the municipalities in their creation of street improvement districts and in their assessment of property for special benefits as authorized by state law or by home rule charter.

Source: Laws 1969, c. 312, § 24, p. 1128; Laws 1971, LB 100, § 13; Laws 1983, LB 10, § 8; Laws 2007, LB277, § 5.
Effective date September 1, 2007.

39-2125 Sections, how construed. Sections 13-914 and 39-2101 to 39-2125 shall be construed as an independent act, complete in itself, and in the event of conflict between any provisions of sections 13-914 and 39-2101 to 39-2125 and any other statutes, the provisions of sections 13-914 and 39-2101 to 39-2125 shall control.

Source: Laws 1969, c. 312, § 25, p. 1128; Laws 1983, LB 10, § 9; Laws 2007, LB277, § 6.
Effective date September 1, 2007.

ARTICLE 25

DISTRIBUTION TO POLITICAL SUBDIVISIONS

(a) ROADS

Section.

39-2502. County highway superintendent, defined; duties; incentive payment.

(b) STREETS

39-2512. City street superintendent, defined; duties; incentive payment.

(a) ROADS

39-2502 County highway superintendent, defined; duties; incentive payment. An incentive payment shall be made to each county having in its employ a county highway superintendent licensed under the County Highway and City Street Superintendents Act, during the calendar year preceding the year in which payment is made. For purposes of sections 39-2501 to 39-2510, county highway superintendent means a person who actually performs the following duties:

- (1) Developing and annually updating a long-range plan based on needs and coordinated with adjacent local governmental units;
- (2) Developing an annual program for design, construction, and maintenance;
- (3) Developing an annual budget based on programmed projects and activities;
- (4) Submitting such plans, programs, and budgets to the local governing body for approval;
- (5) Implementing the capital improvements and maintenance activities provided in the approved plans, programs, and budgets; and
- (6) Preparing and submitting annually to the Board of Public Roads Classifications and Standards the county's one-year plans, six-year plans, or annual metropolitan transportation improvement programs for highway, road, and street improvements under sections 39-2115 to 39-2117, 39-2119, and 39-2119.01 and a report showing the actual receipts, expenditures, and accomplishments compared with those budgeted and programmed in the county's annual plans as set forth in section 39-2120.

Source: Laws 1969, c. 315, § 2, p. 1133; Laws 1976, LB 724, § 7; Laws 2003, LB 500, § 15; Laws 2007, LB277, § 7.
Effective date September 1, 2007.

Cross Reference

County Highway and City Street Superintendents Act, see section 39-2301.

(b) STREETS

39-2512 City street superintendent, defined; duties; incentive payment. An incentive payment shall be made to each municipality or municipal county having in its employ a city street superintendent licensed under the County Highway and City Street Superintendents Act, during the calendar year preceding the year in which payment is made. For purposes of sections 39-2511 to 39-2520, city street superintendent means a person who actually performs the following duties:

- (1) Developing and annually updating a long-range plan based on needs and coordinated with adjacent local governmental units;
- (2) Developing an annual program for design, construction, and maintenance;
- (3) Developing an annual budget based on programmed projects and activities;
- (4) Submitting such plans, programs, and budgets to the local governing body for approval;
- (5) Implementing the capital improvements and maintenance activities provided in the approved plans, programs, and budgets; and
- (6) Preparing and submitting annually to the Board of Public Roads Classifications and Standards the one-year plans, six-year plans, or annual metropolitan transportation improvement programs of the municipality or municipal county for highway, road, and street improvements under sections 39-2115 to 39-2117, 39-2119, and 39-2119.01 and a report showing the actual receipts, expenditures, and accomplishments compared with those budgeted and programmed in the annual plans of the municipality or municipal county as set forth in section 39-2120.

Source: Laws 1969, c. 316, § 2, p. 1139; Laws 1976, LB 724, § 8; Laws 2001, LB 142, § 46; Laws 2003, LB 500, § 18; Laws 2007, LB277, § 8.
Effective date September 1, 2007.

Cross Reference

County Highway and City Street Superintendents Act, see section 39-2301.

CHAPTER 40

HOMESTEADS

Article.

1. Homesteads. 40-101.

ARTICLE 1

HOMESTEADS

Section.

40-101. Homestead, defined; exempted.

40-101 Homestead, defined; exempted. A homestead not exceeding sixty thousand dollars in value shall consist of the dwelling house in which the claimant resides, its appurtenances, and the land on which the same is situated, not exceeding one hundred and sixty acres of land, to be selected by the owner, and not in any incorporated city or village, or, at the option of the claimant, a quantity of contiguous land not exceeding two lots within any incorporated city or village, and shall be exempt from judgment liens and from execution or forced sale, except as provided in sections 40-101 to 40-116.

Source: Laws 1879, § 1, p. 57; R.S.1913, § 3076; C.S.1922, § 2816; C.S.1929, § 40-101; R.S.1943, § 40-101; Laws 1957, c. 153, § 3, p. 498; Laws 1973, LB 15, § 1; Laws 1980, LB 940, § 3; Laws 1986, LB 999, § 2; Laws 1997, LB 372, § 4; Laws 2007, LB237, § 1.
Effective date September 1, 2007.

CHAPTER 42

HUSBAND AND WIFE

Article.

1. Marriage. 42-106.
3. Divorce, Alimony, and Child Support.
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42-934.

ARTICLE 1

MARRIAGE

Section.

42-106. License issued by county clerk; contents; marriage record; forms.

42-106 License issued by county clerk; contents; marriage record; forms. When an application is made for a license to the county clerk, he or she shall, upon the granting of such license, state in the license the information contained in the application as provided in section 42-104. The license shall, prior to the issuing thereof, be entered of record in the office of the county clerk in a suitable book to be provided for that purpose.

The forms for the application, license, and certificate of marriage shall be provided by the Department of Health and Human Services at actual cost as determined by the department.

Source: R.S.1866, c. 34, § 6, p. 254; Laws 1869, § 1, p. 167; R.S.1913, § 1545; C.S.1922, § 1494; C.S.1929, § 42-106; R.S.1943, § 42-106; Laws 1971, LB 728, § 3; Laws 1986, LB 525, § 6; Laws 1989, LB 344, § 3; Laws 1996, LB 1044, § 96; Laws 2007, LB296, § 55.
Operative date July 1, 2007.

Cross Reference

Fee for proceedings, see section 33-110.

ARTICLE 3

DIVORCE, ALIMONY, AND CHILD SUPPORT

(d) DIVORCE AND ANNULMENT ACTIONS

Section.

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- 42-351. County or district court; jurisdiction.
- 42-353. Complaint; contents.
- 42-358. Attorney for minor child; appointment; powers; child or spousal support; records; income withholding; contempt proceedings; fees; evidence; appeal.
- 42-358.01. Delinquent support order payments; records.
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- 42-364. Action involving child support, child custody, parenting time, visitation, or other access; parenting plan; legal custody and physical custody determination; rights of parents; child support; termination of parental rights; court; duties; modification proceedings.
- 42-364.13. Support order; requirements.
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- 42-372.03. Legal separation decree; application to set aside decree.

(d) DIVORCE AND ANNULMENT ACTIONS

42-347 Terms, defined. For purposes of sections 42-347 to 42-381, unless the context otherwise requires:

(1) Authorized attorney means an attorney (a) employed by the county subject to the approval of the county board, (b) employed by the Department of Health and Human Services, or (c) appointed by the court, who is authorized to investigate and prosecute child and spousal support cases. An authorized attorney shall represent the state as provided in section 43-512.03;

(2) Custody includes both legal custody and physical custody;

(3) Dissolution of marriage means the termination of a marriage by decree of a court of competent jurisdiction upon a finding that the marriage is irretrievably broken. The term dissolution of marriage shall be considered synonymous with divorce, and whenever the term divorce appears in the statutes it means dissolution of marriage pursuant to sections 42-347 to 42-381;

(4) Joint legal custody has the same meaning as in section 43-2922;

(5) Joint physical custody has the same meaning as in section 43-2922;

(6) Legal custody has the same meaning as in section 43-2922;

(7) Legal separation means a decree of a court of competent jurisdiction providing that two persons who have been legally married shall thereafter live separate and apart and providing for any necessary adjustment of property, support, and custody rights between the parties but not dissolving the marriage;

(8) Physical custody has the same meaning as in section 43-2922;

(9) Spousal support, when used in the context of income withholding or any provisions of law which might lead to income withholding, means alimony or maintenance support for a spouse or former spouse when ordered as a part of an order, decree, or judgment which provides for child support and the child and spouse or former spouse are living in the same household;

(10) State Disbursement Unit has the same meaning as in section 43-3341;

(11) Support order has the same meaning as in section 43-1717; and

(12) Title IV-D Division has the same meaning as in section 43-3341.

Source: Laws 1972, LB 820, § 1; Laws 1985, Second Spec. Sess., LB 7, § 8; Laws 1987, LB 573, § 1; Laws 1989, LB 401, § 2; Laws 1994, LB 1224, § 42; Laws 1996, LB 1044, § 98; Laws 1997, LB 229, § 7; Laws 1997, LB 307, § 15; Laws 2000, LB 972, § 7; Laws 2007, LB554, § 28.
Operative date January 1, 2008.

42-349.01 Repealed. Laws 2007, LB 554, § 49.

Operative date January 1, 2008.

42-351 County or district court; jurisdiction. (1) In proceedings under sections 42-347 to 42-381, the court shall have jurisdiction to inquire into such matters, make such investigations, and render such judgments and make such orders, both temporary and final, as are appropriate concerning the status of the marriage, the custody and support of minor children, the support of either party, the settlement of the property rights of the parties, and the award of costs and attorney's fees. The court shall determine jurisdiction for child custody proceedings under the Uniform Child Custody Jurisdiction and Enforcement Act.

(2) When final orders relating to proceedings governed by sections 42-347 to 42-381 are on appeal and such appeal is pending, the court that issued such orders shall retain jurisdiction to provide for such orders regarding support, custody, parenting time, visitation, or other access, orders shown to be necessary to allow the use of property or to prevent the irreparable harm to or loss of property during the pendency of such appeal, or other appropriate orders in aid of the appeal process. Such orders shall not be construed to prejudice any party on appeal.

Source: Laws 1972, LB 820, § 5; Laws 1984, LB 276, § 1; Laws 1991, LB 732, § 100; Laws 1992, LB 360, § 10; Laws 1996, LB 1296, § 11; Laws 1997, LB 229, § 11; Laws 2002, LB 876, § 73; Laws 2003, LB 148, § 42; Laws 2007, LB554, § 29.
Operative date January 1, 2008.

Cross Reference

Uniform Child Custody Jurisdiction and Enforcement Act, see section 43-1226.

42-353 Complaint; contents. The pleadings required by sections 42-347 to 42-381 shall be governed by the rules of pleading in civil actions promulgated under section 25-801.01. The complaint shall include the following:

(1) The name and address of the plaintiff and his or her attorney, except that for a plaintiff who is living in an undisclosed location because of safety concerns, only the county and state of the address are required;

(2) The name and address, if known, of the defendant;

(3) The date and place of marriage;

(4) The name and year of birth of each child whose custody or welfare may be affected by the proceedings and whether (a) a parenting plan as provided in the Parenting Act has been developed and (b) child custody, parenting time, visitation, or other access or child support is a contested issue;

(5) If the plaintiff is a party to any other pending action for divorce, separation, or dissolution of marriage, a statement as to where such action is pending;

(6) Reference to any existing restraining orders, protection orders, or criminal no-contact orders regarding any party to the proceedings;

(7) Financial statements if required by section 42-359;

(8) A statement of the relief sought by the plaintiff, including adjustment of custody, property, and support rights; and

(9) An allegation that the marriage is irretrievably broken.

Source: Laws 1972, LB 820, § 7; Laws 1997, LB 229, § 13; Laws 2004, LB 1207, § 21; Laws 2007, LB221, § 1; Laws 2007, LB554, § 30.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 221, section 1, with LB 554, section 30, to reflect all amendments.

Note: The changes made by LB 221 became effective September 1, 2007. The changes made by LB 554 became operative January 1, 2008.

Cross Reference

Complaint, statement of jurisdiction required, see section 25-2740.

Parenting Act, see section 43-2920.

42-358 Attorney for minor child; appointment; powers; child or spousal support; records; income withholding; contempt proceedings; fees; evidence; appeal. (1) The court may appoint an attorney to protect the interests of any minor children of the parties. Such attorney shall be empowered to make independent investigations and to cause witnesses to appear and testify on matters pertinent to the welfare of the children. The court shall by order fix the fee, including disbursements, for such attorney, which amount shall be taxed as costs and paid by the parties as ordered. If the court finds that the party responsible is indigent, the court may order the county to pay the costs.

(2) Following entry of any decree, the court having jurisdiction over the minor children of the parties may at any time appoint an attorney, as friend of the court, to initiate contempt proceedings for failure of any party to comply with an order of the court directing such party to pay temporary or permanent child support. The county attorney or authorized attorney may be appointed by the court for the purposes provided in this section, in which case the county attorney or authorized attorney shall represent the state.

(3) The clerk of each district court shall maintain records of support orders. The Title IV-D Division of the Department of Health and Human Services shall maintain support order payment records pursuant to section 43-3342.01 and the clerk of each district court shall maintain records of payments received pursuant to sections 42-369 and 43-3342.01. For

support orders in all cases issued before September 6, 1991, and for support orders issued or modified on or after September 6, 1991, in cases in which no party has applied for services under Title IV-D of the federal Social Security Act, as amended, each month the Title IV-D Division shall certify all cases in which the support order payment is delinquent in an amount equal to the support due and payable for a one-month period of time. The Title IV-D Division shall provide the case information in electronic format, and upon request in print format, to the judge presiding over domestic relations cases and to the county attorney or authorized attorney. A rebuttable presumption of contempt shall be established if a prima facie showing is made that the court-ordered child or spousal support is delinquent. In cases in which one of the parties receives services under Title IV-D of the federal Social Security Act, as amended, the Title IV-D Division shall certify all such delinquent support order payments to the county attorney or the authorized attorney.

In each case certified, if income withholding has not been implemented it shall be implemented pursuant to the Income Withholding for Child Support Act. If income withholding is not feasible and no other action is pending for the collection of support payments, the court shall appoint an attorney to commence contempt of court proceedings. If the county attorney or authorized attorney consents, he or she may be appointed for such purpose. The contempt proceeding shall be instituted within ten days following appointment, and the case shall be diligently prosecuted to completion. The court shall by order fix the fee, including disbursements, for such attorney, which amount shall be taxed as costs and paid by the parties as ordered. Any fees allowed for the services of any county attorney or authorized attorney shall be paid to the Department of Health and Human Services when there is an assignment of support to the department pursuant to section 43-512.07 or when an application for child support services is on file with a county attorney or authorized attorney. If the court finds the party responsible is indigent, the court may order the county to pay the costs.

(4) If, at the hearing, the person owing child or spousal support is called for examination as an adverse party and such person refuses to answer upon the ground that his or her testimony may be incriminating, the court may, upon the motion of the county attorney or authorized attorney, require the person to answer and produce the evidence. In such a case the evidence produced shall not be admissible in any criminal case against such person nor shall any evidence obtained because of the knowledge gained by such evidence be so admissible.

(5) The court may order access to all revenue information maintained by the Department of Revenue or other agencies concerning the income of persons liable or who pursuant to this section and sections 42-358.08 and 42-821 may be found liable to pay child or spousal support payments.

(6) Any person aggrieved by a determination of the court may appeal such decision to the Court of Appeals.

Source: Laws 1972, LB 820, § 12; Laws 1974, LB 961, § 1; Laws 1975, LB 212, § 1; Laws 1976, LB 926, § 1; Laws 1978, LB 960, § 1; Laws 1985, Second Spec. Sess., LB 7, § 10; Laws 1991, LB 457, § 1; Laws 1991, LB 732, § 101; Laws 1992, LB 1184, § 11; Laws 1994, LB 1224, § 43; Laws 1996, LB 1044, § 99; Laws 1996, LB 1155, § 7; Laws 1997, LB 307, § 16; Laws 2000, LB 972, § 9; Laws 2002, LB 1062, § 2; Laws 2005, LB 396, § 1; Laws 2007, LB 296, § 56.
Operative date July 1, 2007.

Cross Reference

Income Withholding for Child Support Act, see section 43-1701.

42-358.01 Delinquent support order payments; records. Records of delinquencies in support order payments shall be kept by the Title IV-D Division of the Department of Health and Human Services or by the clerks of the district courts pursuant to their responsibilities under law.

Source: Laws 1975, LB 212, § 3; Laws 2000, LB 972, § 10; Laws 2007, LB296, § 57.
Operative date July 1, 2007.

42-358.02 Delinquent child support payments; interest; rate; report; Title IV-D Division; duties. (1) All delinquent child support payments shall draw interest at the rate specified in section 45-103 in effect on the date of the most recent order or decree. Such interest shall be computed as simple interest.

(2) All child support payments shall become delinquent the day after they are due and owing, except that no obligor whose child support payments are automatically withheld from his or her paycheck shall be regarded or reported as being delinquent or in arrears if (a) any delinquency or arrearage is solely caused by a disparity between the schedule of the obligor's regular pay dates and the scheduled date the child support is due, (b) the total amount of child support to be withheld from the paychecks of the obligor and the amount ordered by the support order are the same on an annual basis, and (c) the automatic deductions for child support are continuous and occurring. Interest shall not accrue until thirty days after such payments are delinquent.

(3) The court shall order the determination of the amount of interest due, and such interest shall be payable in the same manner as the support payments upon which the interest accrues subject to subsection (2) of this section or unless it is waived by agreement of the parties. The Title IV-D Division of the Department of Health and Human Services shall compute interest and identify delinquencies pursuant to this section on the payments received by the State Disbursement Unit pursuant to section 42-369. The Title IV-D Division shall provide the case information in electronic format, and upon request in print format, to the judge presiding over domestic relations cases and to the county attorney or authorized attorney.

(4) Support order payments shall be credited in the following manner:

(a) First, to the payments due for the current month in the following order: Child support payments, then spousal support payments, and lastly medical support payments;

(b) Second, toward any payment arrearage owing, in the following order: Child support payment arrearage, then spousal support payment arrearage, and lastly medical support payment arrearage; and

(c) Third, toward the interest on any payment arrearage, in the following order: Child support payment arrearage interest, then spousal support payment arrearage interest, and lastly medical support payment arrearage interest.

(5) Interest which may have accrued prior to September 6, 1991, shall not be affected or altered by changes to this section which take effect on such date. All delinquent child support payments and all decrees entered prior to such date shall draw interest at the effective rate as prescribed by this section commencing as of such date.

Source: Laws 1975, LB 212, § 4; Laws 1981, LB 167, § 31; Laws 1983, LB 371, § 2; Laws 1984, LB 845, § 26; Laws 1985, Second Spec. Sess., LB 7, § 11; Laws 1987, LB 569, § 1; Laws 1991, LB 457, § 2; Laws 1997, LB 18, § 1; Laws 2000, LB 972, § 11; Laws 2005, LB 396, § 2; Laws 2007, LB296, § 58.
Operative date July 1, 2007.

42-359 Applications and complaints for spousal, child, or medical support or alimony; financial statements. Applications and complaints regarding spousal support, child support, medical support, or alimony shall be accompanied by a statement of the applicant's or complainant's financial condition and, to the best of his or her knowledge, a statement of the other party's financial condition. Such other party may file his or her statement, if he or she so desires, and shall do so if ordered by the court. Statements shall be under oath and shall show income from salary or other sources, assets, debts and payments thereon, living expenses, and other relevant information. Required forms for financial statements may be furnished by the court.

Source: Laws 1972, LB 820, § 13; Laws 2007, LB554, § 31.
Operative date January 1, 2008.

42-364 Action involving child support, child custody, parenting time, visitation, or other access; parenting plan; legal custody and physical custody determination; rights of parents; child support; termination of parental rights; court; duties; modification proceedings. (1) In an action under Chapter 42 involving child support, child custody, parenting time, visitation, or other access, the parties and their counsel, if represented, shall develop a parenting plan as provided in the Parenting Act. If the parties and counsel do not develop a parenting plan, the complaint shall so indicate as provided in section 42-353 and before July 1, 2010, the case may be referred to mediation, specialized alternative dispute resolution, or other alternative dispute resolution process and on or after such date the case shall be referred to mediation or specialized alternative dispute resolution as provided in the Parenting Act. The decree in an action involving the custody of a minor child shall include the determination of legal custody and physical custody based upon the best interests of the child, as defined in the Parenting Act, and child support. Such determinations shall be made by incorporation into the decree of (a) a parenting plan developed by the parties, if approved by the court, or (b) a parenting plan developed by the court based upon evidence produced after a hearing in open court if no parenting plan is developed by the parties or the plan developed by the parties is not approved by the court. The decree shall conform to the Parenting Act. The social security number of each parent and the minor child shall be furnished to the clerk of the district court but shall not be disclosed or considered a public record.

(2) In determining legal custody or physical custody, the court shall not give preference to either parent based on the sex of the parent and, except as provided in section 43-2933, no

presumption shall exist that either parent is more fit or suitable than the other. Custody shall be determined on the basis of the best interests of the child, as defined in the Parenting Act. Unless parental rights are terminated, both parents shall continue to have the rights stated in section 42-381.

(3) Custody of a minor child may be placed with both parents on a joint legal custody or joint physical custody basis, or both, (a) when both parents agree to such an arrangement in the parenting plan and the court determines that such an arrangement is in the best interests of the child or (b) if the court specifically finds, after a hearing in open court, that joint physical custody or joint legal custody, or both, is in the best interests of the minor child regardless of any parental agreement or consent.

(4) In determining the amount of child support to be paid by a parent, the court shall consider the child support calculations included in the separate financial plan submitted with the parenting plan, the earning capacity of each parent, and the guidelines provided by the Supreme Court pursuant to section 42-364.16 for the establishment of child support obligations. Upon application, hearing, and presentation of evidence of an abusive disregard of the use of child support money paid by one party to the other, the court may require the party receiving such payment to file a verified report with the court, as often as the court requires, stating the manner in which such money is used. Child support paid to the party having custody of the minor child shall be the property of such party except as provided in section 43-512.07. The clerk of the district court shall maintain a record, separate from all other judgment dockets, of all decrees and orders in which the payment of child support or spousal support has been ordered, whether ordered by a district court, county court, separate juvenile court, or county court sitting as a juvenile court. Orders for child support in cases in which a party has applied for services under Title IV-D of the federal Social Security Act, as amended, shall be reviewed as provided in sections 43-512.12 to 43-512.18.

(5) Whenever termination of parental rights is placed in issue:

(a) The court shall transfer jurisdiction to a juvenile court established pursuant to the Nebraska Juvenile Code unless a showing is made that the county court or district court is a more appropriate forum. In making such determination, the court may consider such factors as cost to the parties, undue delay, congestion of dockets, and relative resources available for investigative and supervisory assistance. A determination that the county court or district court is a more appropriate forum shall not be a final order for the purpose of enabling an appeal. If no such transfer is made, the court shall appoint an attorney as guardian ad litem to protect the interests of any minor child. The court may terminate the parental rights of one or both parents after notice and hearing when the court finds such action to be in the best interests of the minor child, as defined in the Parenting Act, and it appears by the evidence that one or more of the grounds for termination of parental rights stated in section 43-292 exist; and

(b) The court shall inform a parent who does not have legal counsel of the parent's right to retain counsel and of the parent's right to retain legal counsel at county expense if such parent is unable to afford legal counsel. If such parent is unable to afford legal counsel and

requests the court to appoint legal counsel, the court shall immediately appoint an attorney to represent the parent in the termination proceedings. The court shall order the county to pay the attorney's fees and all reasonable expenses incurred by the attorney in protecting the rights of the parent. At such hearing, the guardian ad litem shall take all action necessary to protect the interests of the minor child. The court shall fix the fees and expenses of the guardian ad litem and tax the same as costs but may order the county to pay on finding the responsible party indigent and unable to pay.

(6) Modification proceedings relating to support, custody, parenting time, visitation, other access, or removal of children from the jurisdiction of the court shall be commenced by filing a complaint to modify. Modification of a parenting plan is governed by the Parenting Act. Proceedings to modify a parenting plan shall be commenced by filing a complaint to modify. Such actions may be referred to mediation, specialized alternative dispute resolution, or other alternative dispute resolution process before July 1, 2010, and on and after such date shall be referred to mediation or specialized alternative dispute resolution as provided in the Parenting Act. Service of process and other procedure shall comply with the requirements for a dissolution action.

Source: Laws 1983, LB 138, § 1; Laws 1985, LB 612, § 1; Laws 1985, Second Spec. Sess., LB 7, § 16; Laws 1991, LB 457, § 3; Laws 1991, LB 715, § 1; Laws 1993, LB 629, § 21; Laws 1994, LB 490, § 1; Laws 1996, LB 1296, § 15; Laws 1997, LB 752, § 96; Laws 2004, LB 1207, § 25; Laws 2006, LB 1113, § 35; Laws 2007, LB554, § 32.
Operative date January 1, 2008.

Cross Reference

Nebraska Juvenile Code, see section 43-2,129.

Parenting Act, see section 43-2920.

Violation of custody, penalty, see section 28-316.

42-364.13 Support order; requirements. (1) Any order for support entered by the court shall specifically provide that any person ordered to pay a judgment shall be required to furnish to the clerk of the district court his or her address, telephone number, and social security number, the name of his or her employer, whether or not such person has access to employer-related health insurance coverage and, if so, the health insurance policy information, and any other information the court deems relevant until such judgment is paid in full. The person shall also be required to advise the clerk of any changes in such information between the time of entry of the decree and the payment of the judgment in full. If both parents are parties to the action, such order shall provide that each be required to furnish to the clerk of the district court all of the information required by this subsection. Failure to comply with this section shall be punishable by contempt.

(2) All support orders entered by the court shall include the birthdate of any child for whom the order requires the provision of support.

(3) Until the Title IV-D Division of the Department of Health and Human Services has operative the statewide automated data processing and retrieval system necessary for centralized collection and disbursement of support order payments:

(a) If any case contains an order or judgment for child, medical, or spousal support, the order shall include the following statements:

In the event that the (plaintiff or defendant) fails to pay any child, medical, or spousal support payment, as such failure is certified each month by the district court clerk in cases in which court-ordered support is delinquent in an amount equal to the support due and payable for a one-month period of time, he or she shall be subject to income withholding and may be required to appear in court on a date to be determined by the court and show cause why such payment was not made. In the event that the (plaintiff or defendant) fails to pay and appear as ordered, a warrant shall be issued for his or her arrest.

(b) If the court orders income withholding regardless of whether or not payments are in arrears pursuant to section 43-1718.01 or 43-1718.02, the statement in this subsection may be altered to read as follows:

In the event that the (plaintiff or defendant) fails to pay any child, medical, or spousal support payment, as such failure is certified each month by the district court clerk in cases in which court-ordered support is delinquent in an amount equal to the support due and payable for a one-month period of time, he or she may be required to appear in court on a date to be determined by the court and show cause why such payment was not made. In the event that the (plaintiff or defendant) fails to pay and appear as ordered, a warrant shall be issued for his or her arrest.

(4) When the Title IV-D Division of the Department of Health and Human Services has operative the statewide automated data processing and retrieval system necessary for centralized collection and disbursement of support order payments:

(a) If any case contains an order or judgment for child, medical, or spousal support, the order shall include the following statements:

In the event that the (plaintiff or defendant) fails to pay any child, medical, or spousal support payment, as such failure is certified each month by the State Disbursement Unit in cases in which court-ordered support is delinquent in an amount equal to the support due and payable for a one-month period of time, he or she shall be subject to income withholding and may be required to appear in court on a date to be determined by the court and show cause why such payment was not made. In the event that the (plaintiff or defendant) fails to pay and appear as ordered, a warrant shall be issued for his or her arrest.

(b) If the court orders income withholding regardless of whether or not payments are in arrears pursuant to section 43-1718.01 or 43-1718.02, the statement in this subsection may be altered to read as follows:

In the event that the (plaintiff or defendant) fails to pay any child, medical, or spousal support payment, as such failure is certified each month by the State Disbursement Unit in cases in which court-ordered support is delinquent in an amount equal to the support due and payable for a one-month period of time, he or she may be required to appear in court on a date to be determined by the court and show cause why such payment was not made. In the

event that the (plaintiff or defendant) fails to pay and appear as ordered, a warrant shall be issued for his or her arrest.

Source: Laws 1983, LB 371, § 9; Laws 1984, LB 845, § 30; Laws 1985, Second Spec. Sess., LB 7, § 17; Laws 1993, LB 523, § 1; Laws 1994, LB 1224, § 45; Laws 2000, LB 972, § 13; Laws 2004, LB 1207, § 27; Laws 2006, LB 1113, § 36; Laws 2007, LB296, § 59.
Operative date July 1, 2007.

42-364.14 Parent-employee; consent to withholding of earnings; procedure. Nothing in the Income Withholding for Child Support Act or sections 42-364.01 to 42-364.13 shall be construed as prohibiting a parent-employee from consenting to an order to withhold and transmit earnings as part of a property settlement agreement incorporated into a decree dissolving a marriage or by agreement in a proceeding in the district court, county court, or separate juvenile court in which the payment of child support is an issue. If the parent-employee has consented to such an order, the court shall not be required to hold a separate hearing or make findings as provided in the act or such sections. The clerk of the court shall notify the employer, if any, of the parent-employee of any such order by first-class mail and file a record of such mailing in the court.

Source: Laws 1983, LB 371, § 10; Laws 2007, LB554, § 33.
Operative date January 1, 2008.

Cross Reference

Income Withholding for Child Support Act, see section 43-1701.

42-364.15 Enforcement of parenting time, visitation, or other access orders; procedure; costs. In any proceeding when a court has ordered a parent to pay, temporarily or permanently, any amount for the support of a minor child and in the same proceeding has ordered parenting time, visitation, or other access with any minor child on behalf of such parent, the court shall enforce its orders as follows:

(1) Upon the filing of a motion which is accompanied by an affidavit stating that either parent has unreasonably withheld or interfered with the exercise of the court order after notice to the parent and hearing, the court shall enter such orders as are reasonably necessary to enforce rights of either parent including the modification of previous court orders relating to parenting time, visitation, or other access. The court may use contempt powers to enforce its court orders relating to parenting time, visitation, or other access. The court may require either parent to file a bond or otherwise give security to insure his or her compliance with court order provisions; and

(2) Costs, including reasonable attorney's fees, may be taxed against a party found to be in contempt pursuant to this section.

Source: Laws 1983, LB 371, § 3; Laws 2000, LB 972, § 14; Laws 2007, LB554, § 34.
Operative date January 1, 2008.

42-369 Support or alimony; presumption; items includable; payments; disbursement; enforcement; health insurance. (1) All orders, decrees, or judgments for temporary or permanent support payments, including child, spousal, or medical support, and

all orders, decrees, or judgments for alimony or modification of support payments or alimony shall direct the payment of such sums to be made commencing on the first day of each month for the use of the persons for whom the support payments or alimony have been awarded. Such payments shall be made to the clerk of the district court (a) when the order, decree, or judgment is for spousal support, alimony, or maintenance support and the order, decree, or judgment does not also provide for child support, and (b) when the payment constitutes child care or day care expenses, unless payments under subdivision (1)(a) or (1)(b) of this section are ordered to be made directly to the obligee. All other support order payments shall be made to the State Disbursement Unit. In all cases in which income withholding has been implemented pursuant to the Income Withholding for Child Support Act or sections 42-364.01 to 42-364.14, support order payments shall be made to the State Disbursement Unit. The court may order such payment to be in cash or guaranteed funds.

(2) If the person against whom an order, decree, or judgment for child support is entered or the custodial parent or guardian has health insurance available to him or her through an employer or organization which may extend to cover any children affected by the order, decree, or judgment the court shall require the option to be exercised or comparable coverage be obtained by either party for additional coverage which favors the best interests of the child or children affected unless the parties have otherwise stipulated in writing or to the court.

(3) Such an order, decree, or judgment for support may include the providing of necessary shelter, food, clothing, care, medical support as defined in section 43-512, medical attention, expenses of confinement, education expenses, funeral expenses, and any other expense the court may deem reasonable and necessary.

(4) Orders, decrees, and judgments for temporary or permanent support or alimony shall be filed with the clerk of the district court and have the force and effect of judgments when entered. The clerk and the State Disbursement Unit shall disburse all payments received as directed by the court and as provided in sections 42-358.02 and 43-512.07. Records shall be kept of all funds received and disbursed by the clerk and the unit and shall be open to inspection by the parties and their attorneys.

(5) Unless otherwise specified by the court, an equal and proportionate share of any child support awarded shall be presumed to be payable on behalf of each child subject to the order, decree, or judgment for purposes of an assignment under section 43-512.07.

Source: Laws 1972, LB 820, § 23; Laws 1983, LB 371, § 11; Laws 1991, LB 457, § 4; Laws 1993, LB 435, § 1; Laws 2000, LB 972, § 15; Laws 2007, LB554, § 35.
Operative date January 1, 2008.

Cross Reference

Income Withholding for Child Support Act, see section 43-1701.

42-371 Judgments and orders; liens; release; time limitation on lien; security; attachment; priority. Under the Uniform Interstate Family Support Act and sections 42-347 to 42-381, 43-290, 43-512 to 43-512.10, and 43-1401 to 43-1418:

(1) All judgments and orders for payment of money shall be liens, as in other actions, upon real property and any personal property registered with any county office and may be enforced or collected by execution and the means authorized for collection of money judgments;

(2)(a) If support order payments are current, a partial or total release of the judgment or subordination of a lien for a support order, generally or on specific real or personal property, may be accomplished by filing (i) a current certified copy of support order payment history from the Title IV-D Division explicitly reciting that all support order payments are current and (ii) a partial or total release of the judgment or subordination document in the county office where the lien is registered.

(b) If support order payments are not current, the person desiring such release or subordination may file an application for the relief desired in the court which rendered the original judgment or support order. A copy of the application and a notice of hearing shall be served on the judgment creditor either personally or by registered or certified mail no less than ten days before the date of hearing. If the court finds that the release or subordination is not requested for the purpose of avoiding payment and that the release or subordination will not unduly reduce the security, the court may issue an order for a total or partial release of all or specific real or personal property from the lien or issue an order subordinating the lien. As a condition for such release or subordination, the court may require the posting of a bond with the clerk in an amount fixed by the court, guaranteeing payment of the judgment.

(c) For purposes of this section, a current certified copy of support order payment history from the Title IV-D Division explicitly reciting that all support payments are current is valid for thirty days after the date of certification;

(3) Full faith and credit shall be accorded to a lien arising by operation of law against real and personal property for amounts overdue relating to a support order owed by an obligor who resides or owns property in this state when another state agency, party, or other entity seeking to enforce such lien complies with the procedural rules relating to the filing of the lien in this state. The state agency, party, or other entity seeking to enforce such lien shall send a certified copy of the support order with all modifications, the notice of lien prescribed by 42 U.S.C. 652(a)(11) and 42 U.S.C. 654(9)(E), and the appropriate fee to the clerk of the district court in the jurisdiction within this state in which the lien is sought. Upon receiving the appropriate documents and fee, the clerk of the district court shall accept the documents filed and such acceptance shall constitute entry of the foreign support order for purposes of this section only. Entry of a lien arising in another state pursuant to this section shall result in such lien being afforded the same treatment as liens arising in this state. The filing process required by this section shall not be construed as requiring an application, complaint, answer, and hearing as might be required for the filing or registration of foreign judgments under the Nebraska Uniform Enforcement of Foreign Judgments Act or the Uniform Interstate Family Support Act;

(4) Support order judgments shall cease to be liens on real or registered personal property ten years from the date (a) the youngest child becomes of age or dies or (b) the most recent

execution was issued to collect the judgment, whichever is later, and such lien shall not be reinstated;

(5) Alimony and property settlement award judgments, if not covered by subdivision (4) of this section, shall cease to be a lien on real or registered personal property ten years from the date (a) the judgment was entered, (b) the most recent payment was made, or (c) the most recent execution was issued to collect the judgment, whichever is latest, and such lien shall not be reinstated;

(6) The court may in any case, upon application or its own motion, after notice and hearing, order a person required to make payments to post sufficient security, bond, or other guarantee with the clerk to insure payment of both current and any delinquent amounts. Upon failure to comply with the order, the court may also appoint a receiver to take charge of the debtor's property to insure payment. Any bond, security, or other guarantee paid in cash may, when the court deems it appropriate, be applied either to current payments or to reduce any accumulated arrearage;

(7)(a) The lien of a mortgage or deed of trust which secures a loan, the proceeds of which are used to purchase real property, and (b) any lien given priority pursuant to a subordination document under this section shall attach prior to any lien authorized by this section. Any mortgage or deed of trust which secures the refinancing, renewal, or extension of a real property purchase money mortgage or deed of trust shall have the same lien priority with respect to any lien authorized by this section as the original real property purchase money mortgage or deed of trust to the extent that the amount of the loan refinanced, renewed, or extended does not exceed the amount used to pay the principal and interest on the existing real property purchase money mortgage or deed of trust, plus the costs of the refinancing, renewal, or extension; and

(8) Any lien authorized by this section against personal property registered with any county consisting of a motor vehicle or mobile home shall attach upon notation of the lien against the motor vehicle or mobile home certificate of title and shall have its priority established pursuant to the terms of section 60-164 or a subordination document executed under this section.

Source: Laws 1972, LB 820, § 25; Laws 1975, LB 212, § 2; Laws 1980, LB 622, § 3; Laws 1985, Second Spec. Sess., LB 7, § 19; Laws 1986, LB 600, § 9; Laws 1991, LB 715, § 3; Laws 1993, LB 500, § 52; Laws 1993, LB 523, § 3; Laws 1994, LB 1224, § 47; Laws 1997, LB 229, § 19; Laws 1999, LB 594, § 7; Laws 2004, LB 1207, § 29; Laws 2005, LB 276, § 100; Laws 2007, LB554, § 36. Operative date January 1, 2008.

Cross Reference

Nebraska Uniform Enforcement of Foreign Judgments Act, see section 25-1587.01.
Uniform Interstate Family Support Act, see section 42-701.

42-372.03 Legal separation decree; application to set aside decree. A legal separation decree shall provide that in case of a reconciliation at any time thereafter, the parties may apply to set aside the decree. Upon such application, the court shall set aside the decree and make such orders as are just and reasonable under the circumstances.

Source: Laws 2007, LB132, § 1.
Effective date September 1, 2007.

ARTICLE 7

UNIFORM INTERSTATE FAMILY SUPPORT ACT

(a) UNIFORM INTERSTATE FAMILY SUPPORT ACT

Part II - JURISDICTION

Section.

42-705. Basis for jurisdiction over nonresident.

(a) UNIFORM INTERSTATE FAMILY SUPPORT ACT

Part II - JURISDICTION

42-705 Basis for jurisdiction over nonresident. (a) In a proceeding to establish or enforce a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

- (1) The individual is personally served with notice within this state;
- (2) The individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- (3) The individual resided with the child in this state;
- (4) The individual resided in this state and provided prenatal expenses or support for the child;
- (5) The child resides in this state as a result of the acts or directives of the individual;
- (6) The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
- (7) The individual asserted parentage in this state pursuant to section 43-104.02, 71-628, 71-640.01, or 71-640.02 with the Department of Health and Human Services; or
- (8) There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(b) The basis of personal jurisdiction set forth in subsection (a) of this section or in any other law of this state shall not be used to acquire personal jurisdiction for a tribunal of this state to modify a child support order of another state unless the requirements of section 42-746 or 42-747.03 are met.

Source: Laws 1993, LB 500, § 5; Laws 1996, LB 1044, § 101; Laws 2003, LB 148, § 46; Laws 2007, LB296, § 60.
Operative date July 1, 2007.

ARTICLE 9

DOMESTIC VIOLENCE

(a) PROTECTION FROM DOMESTIC ABUSE ACT

Section.

42-917. Delivery of services; cooperation; coordination of programs.

(b) UNIFORM INTERSTATE ENFORCEMENT OF
DOMESTIC VIOLENCE PROTECTION ORDERS ACT

42-934. Judicial enforcement of order.

(a) PROTECTION FROM DOMESTIC ABUSE ACT

42-917 Delivery of services; cooperation; coordination of programs. The delivery of all services provided for under the Protection from Domestic Abuse Act shall be done in cooperation with existing public, private, state, and local programs whenever possible to avoid duplication of services. Special effort shall be taken to coordinate programs with the Department of Labor, the Nebraska Commission on the Status of Women, the State Department of Education, the Department of Health and Human Services, other appropriate agencies, community service agencies, and private sources.

Source: Laws 1978, LB 623, § 17; Laws 1980, LB 684, § 17; Laws 1995, LB 275, § 2; Laws 1996, LB 1044, § 104; Laws 2004, LB 1083, § 90; Laws 2007, LB296, § 61.
Operative date July 1, 2007.

(b) UNIFORM INTERSTATE ENFORCEMENT OF
DOMESTIC VIOLENCE PROTECTION ORDERS ACT

42-934 Judicial enforcement of order. (a) A person authorized by the law of this state to seek enforcement of a protection order may seek enforcement of a valid foreign protection order in a tribunal of this state. The tribunal shall enforce the terms of the order, including terms that provide relief that a tribunal of this state would lack power to provide but for this section. The tribunal shall enforce the order, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition, or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the tribunal shall follow the procedures of this state for the enforcement of protection orders.

(b) A tribunal of this state may not enforce a foreign protection order issued by a tribunal of a state that does not recognize the standing of a protected individual to seek enforcement of the order.

(c) A tribunal of this state shall enforce the provisions of a valid foreign protection order which govern child custody, parenting time, visitation, or other access, if the order was issued in accordance with the applicable federal and state jurisdictional requirements governing the

issuance of orders relating to child custody, parenting time, visitation, or other access in the issuing state.

(d) A foreign protection order is valid if it:

(1) identifies the protected individual and the respondent;

(2) is currently in effect;

(3) was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing state; and

(4) was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the order was issued, in a manner consistent with the rights of the respondent to due process.

(e) A foreign protection order valid on its face is prima facie evidence of its validity.

(f) Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

(g) A tribunal of this state may enforce provisions of a mutual foreign protection order which favor a respondent only if:

(1) the respondent filed a written pleading seeking a protection order from the tribunal of the issuing state; and

(2) the tribunal of the issuing state made specific findings in favor of the respondent.

Source: Laws 2003, LB 148, § 92; Laws 2007, LB554, § 37.
Operative date January 1, 2008.

CHAPTER 43

INFANTS AND JUVENILES

Article.

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ARTICLE 1

ADOPTION PROCEDURES

(a) GENERAL PROVISIONS

Section.

- 43-102. Petition requirements; decree; adoptive home study, when required; jurisdiction; filings.
- 43-104. Adoption; consent required; exceptions.
- 43-104.01. Child born out of wedlock; biological father registry; Department of Health and Human Services; duties.
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- 43-104.04. Child born out of wedlock; failure to file notice; effect.
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- 43-104.09. Child born out of wedlock; biological mother; affidavit; form.
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(a) GENERAL PROVISIONS

43-102 Petition requirements; decree; adoptive home study, when required; jurisdiction; filings. Except as otherwise provided in the Nebraska Indian Child Welfare

Act, any person or persons desiring to adopt a minor child or an adult child shall file a petition for adoption signed and sworn to by the person or persons desiring to adopt. The consent or consents required by sections 43-104 and 43-105 or section 43-104.07, the documents required by section 43-104.07 or the documents required by sections 43-104.08 to 43-104.24 and section 43-104.25, and a completed preplacement adoptive home study if required by section 43-107 shall be filed prior to the hearing required in section 43-103.

The county court of the county in which the person or persons desiring to adopt a child reside has jurisdiction of adoption proceedings, except that if a separate juvenile court already has jurisdiction over the child to be adopted under the Nebraska Juvenile Code, such separate juvenile court has concurrent jurisdiction with the county court in such adoption proceeding. If a child to be adopted is a ward of any court or a ward of the state at the time of placement and at the time of filing an adoption petition, the person or persons desiring to adopt shall not be required to be residents of Nebraska. The petition and all other court filings for an adoption proceeding shall be filed with the clerk of the county court. The party shall state in the petition whether such party requests that the proceeding be heard by the county court or, in cases in which a separate juvenile court already has jurisdiction over the child to be adopted under the Nebraska Juvenile Code, such separate juvenile court. Such proceeding is considered a county court proceeding even if heard by a separate juvenile court judge and an order of the separate juvenile court in such adoption proceeding has the force and effect of a county court order. The testimony in an adoption proceeding heard before a separate juvenile court judge shall be preserved as in any other separate juvenile court proceeding. The clerks of the district courts shall transfer all adoption petitions and other adoption filings which were filed with such clerks prior to August 28, 1999, to the clerk of the county court where the separate juvenile court which heard the proceeding is situated. The clerk of such county court shall file and docket such petitions and other filings.

Except as set out in subdivisions (1)(b)(ii), (iii), (iv), and (v) of section 43-107, an adoption decree shall not be issued until at least six months after an adoptive home study has been completed by the Department of Health and Human Services or a licensed child placement agency.

Source: Laws 1943, c. 104, § 2, p. 349; R.S.1943, § 43-102; Laws 1975, LB 224, § 1; Laws 1983, LB 146, § 1; Laws 1984, LB 510, § 2; Laws 1985, LB 255, § 18; Laws 1993, LB 16, § 1; Laws 1995, LB 712, § 19; Laws 1996, LB 1001, § 1; Laws 1998, LB 1041, § 6; Laws 1999, LB 375, § 2; Laws 1999, LB 594, § 9; Laws 2007, LB247, § 4; Laws 2007, LB296, § 62.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 247, section 4, with LB 296, section 62, to reflect all amendments.

Note: The changes made by LB 247 became operative June 1, 2007. The changes made by LB 296 became operative July 1, 2007.

Cross Reference

Nebraska Indian Child Welfare Act, see section 43-1501.

Nebraska Juvenile Code, see section 43-2,129.

43-104 Adoption; consent required; exceptions. (1) Except as otherwise provided in this section and in the Nebraska Indian Child Welfare Act, no adoption shall be decreed unless written consents thereto are filed in the county court of the county in which the person or persons desiring to adopt reside or in the county court in which the separate juvenile court having jurisdiction over the custody of the child is located and the written consents are executed by (a) the minor child, if over fourteen years of age, or the adult child, (b) any district court, county court, or separate juvenile court in the State of Nebraska having jurisdiction of the custody of a minor child by virtue of proceedings had in any district court, county court, or separate juvenile court in the State of Nebraska or by virtue of the Uniform Child Custody Jurisdiction and Enforcement Act, and (c) both parents of a child born in lawful wedlock if living, the surviving parent of a child born in lawful wedlock, the mother of a child born out of wedlock, or both the mother and father of a child born out of wedlock as determined pursuant to sections 43-104.08 to 43-104.25. On and after April 20, 2002, a written consent or relinquishment for adoption under this section shall not be valid unless signed at least forty-eight hours after the birth of the child.

(2) Consent shall not be required of any parent who (a) has relinquished the child for adoption by a written instrument, (b) has abandoned the child for at least six months next preceding the filing of the adoption petition, (c) has been deprived of his or her parental rights to such child by the order of any court of competent jurisdiction, or (d) is incapable of consenting.

(3) Consent shall not be required of a putative father who has failed to timely file (a) a Notice of Objection to Adoption and Intent to Obtain Custody pursuant to section 43-104.02 and, with respect to the absence of such filing, a certificate has been filed pursuant to section 43-104.04 or (b) a petition pursuant to section 43-104.05 for the adjudication of such notice and a determination of whether his consent to the adoption is required and the mother of the child has timely executed a valid relinquishment and consent to the adoption pursuant to such section.

(4) Consent shall not be required of an adjudicated or putative father who is not required to consent to the adoption pursuant to section 43-104.22.

Source: Laws 1943, c. 104, § 4(1), p. 350; R.S.1943, § 43-104; Laws 1951, c. 127, § 1, p. 546; Laws 1967, c. 248, § 1, p. 652; Laws 1971, LB 329, § 1; Laws 1973, LB 436, § 1; Laws 1975, LB 224, § 2; Laws 1983, LB 146, § 3; Laws 1984, LB 510, § 3; Laws 1985, LB 255, § 20; Laws 1988, LB 790, § 22; Laws 1995, LB 712, § 20; Laws 1996, LB 1296, § 19; Laws 1998, LB 1041, § 7; Laws 1999, LB 594, § 10; Laws 2002, LB 952, § 2; Laws 2003, LB 148, § 100; Laws 2007, LB247, § 5.
Operative date June 1, 2007.

Cross Reference

Nebraska Indian Child Welfare Act, see section 43-1501.

Uniform Child Custody Jurisdiction and Enforcement Act, see section 43-1226.

43-104.01 Child born out of wedlock; biological father registry; Department of Health and Human Services; duties. (1) The Department of Health and Human Services shall establish a biological father registry. The department shall maintain such registry and shall record the names and addresses of (a) any person adjudicated by a court of this state

or by a court of another state or territory of the United States to be the biological father of a child born out of wedlock if a certified copy of the court order is filed with the registry by such person or any other person, (b) any putative father who has filed with the registry, prior to the receipt of notice under sections 43-104.12 to 43-104.16, a Request for Notification of Intended Adoption with respect to such child, and (c) any putative father who has filed with the registry a Notice of Objection to Adoption and Intent to Obtain Custody with respect to such child.

(2) A Request for Notification of Intended Adoption or a Notice of Objection to Adoption and Intent to Obtain Custody filed with the registry shall include (a) the putative father's name, address, and social security number, (b) the name and last-known address of the mother, (c) the month and year of the birth or the expected birth of the child, (d) the case name, court name, and location of any Nebraska court having jurisdiction over the custody of the child, and (e) a statement by the putative father that he acknowledges liability for contribution to the support and education of the child after birth and for contribution to the pregnancy-related medical expenses of the mother of the child. The person filing the notice shall notify the registry of any change of address pursuant to procedures prescribed in rules and regulations of the department.

(3) A request or notice filed under this section or section 43-104.02 shall be admissible in any action for paternity and shall estop the putative father from denying paternity of such child thereafter.

(4) Any putative father who files a Request for Notification of Intended Adoption or a Notice of Objection to Adoption and Intent to Obtain Custody with the biological father registry may revoke such filing. Upon receipt of such revocation by the registry, the effect shall be as if no filing had ever been made.

(5) The department shall not divulge the names and addresses of persons listed with the biological father registry to any other person except as authorized by law or upon order of a court of competent jurisdiction for good cause shown.

(6) The department may develop information about the registry and may distribute such information, through its existing publications, to the news media and the public. The department may provide information about the registry to the Department of Correctional Services, which may distribute such information through its existing publications.

(7) A person who has been adjudicated by a Nebraska court of competent jurisdiction to be the biological father of a child born out of wedlock who is the subject of a proposed adoption shall not be construed to be a putative father for purposes of sections 43-104.01 to 43-104.05 and shall not be subject to the provisions of such sections as applied to such fathers. Whether such person's consent is required for the proposed adoption shall be determined by the Nebraska court having jurisdiction over the custody of the child pursuant to section 43-104.22, as part of proceedings required under section 43-104 to obtain the court's consent to such adoption.

Source: Laws 1995, LB 712, § 21; Laws 1996, LB 1044, § 105; Laws 1999, LB 594, § 11; Laws 2007, LB247, § 6; Laws 2007, LB296, § 63.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 247, section 6, with LB 296, section 63, to reflect all amendments.

Note: The changes made by LB 247 became operative June 1, 2007. The changes made by LB 296 became operative July 1, 2007.

43-104.02 Child born out of wedlock; Notice of Objection to Adoption and Intent to Obtain Custody; filing requirements. A Notice of Objection to Adoption and Intent to Obtain Custody shall be filed with the biological father registry under section 43-104.01 on forms provided by the Department of Health and Human Services (1) within five business days after the birth of the child or (2) if notice is provided after the birth of the child (a) within five business days after receipt of the notice provided under section 43-104.12 or (b) within five business days after the last date of any published notice provided under section 43-104.14, whichever notice is earlier. Such notice shall be considered to have been filed if it is received by the department or postmarked prior to the end of the fifth business day as provided in this section.

Source: Laws 1975, LB 224, § 3; Laws 1995, LB 712, § 22; Laws 1996, LB 1044, § 106; Laws 1997, LB 752, § 97; Laws 2007, LB247, § 7; Laws 2007, LB296, § 64.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 247, section 7, with LB 296, section 64, to reflect all amendments.

Note: The changes made by LB 247 became operative June 1, 2007. The changes made by LB 296 became operative July 1, 2007.

43-104.03 Child born out of wedlock; filing with biological father registry; department; notice; to whom given. Within three days after the filing of a Request for Notification of Intended Adoption or a Notice of Objection to Adoption and Intent to Obtain Custody with the biological father registry pursuant to sections 43-104.01 and 43-104.02, the Department of Health and Human Services shall cause a certified copy of such request or notice to be mailed by certified mail to (1) the mother or prospective mother of such child at the last-known address shown on the request or notice or an agent specifically designated in writing by the mother or prospective mother to receive such request or notice and (2) any Nebraska court identified by the putative father under section 43-104.01 as having jurisdiction over the custody of the child.

Source: Laws 1975, LB 224, § 4; Laws 1994, LB 1224, § 49; Laws 1995, LB 712, § 23; Laws 1996, LB 1044, § 107; Laws 1999, LB 594, § 12; Laws 2007, LB247, § 8; Laws 2007, LB296, § 65.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 247, section 8, with LB 296, section 65, to reflect all amendments.

Note: The changes made by LB 247 became operative June 1, 2007. The changes made by LB 296 became operative July 1, 2007.

43-104.04 Child born out of wedlock; failure to file notice; effect. If a Notice of Objection to Adoption and Intent to Obtain Custody is not timely filed with the biological

father registry pursuant to section 43-104.02, the mother of a child born out of wedlock or an agent specifically designated in writing by the mother may request, and the Department of Health and Human Services shall supply, a certificate that no such notice has been filed with the biological father registry. The filing of such certificate pursuant to section 43-102 shall eliminate the need or necessity of a consent or relinquishment for adoption by the putative father of such child.

Source: Laws 1975, LB 224, § 5; Laws 1995, LB 712, § 24; Laws 1996, LB 1044, § 108; Laws 1999, LB 594, § 13; Laws 2007, LB247, § 9; Laws 2007, LB296, § 66.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 247, section 9, with LB 296, section 66, to reflect all amendments.

Note: The changes made by LB 247 became operative June 1, 2007. The changes made by LB 296 became operative July 1, 2007.

43-104.05 Child born out of wedlock; notice; filed; petition for adjudication of paternity; trial; guardian ad litem; court; jurisdiction. (1) If a Notice of Objection to Adoption and Intent to Obtain Custody is timely filed with the biological father registry pursuant to section 43-104.02, either the putative father, the mother, or her agent specifically designated in writing shall, within thirty days after the filing of such notice, file a petition for adjudication of the notice and a determination of whether the putative father's consent to the proposed adoption is required. The petition shall be filed in the county court in the county where such child was born or, if a separate juvenile court already has jurisdiction over the custody of the child, in the county court of the county in which such separate juvenile court is located.

(2) If such a petition is not filed within thirty days after the filing of such notice and the mother of the child has executed a valid relinquishment and consent to the adoption within sixty days of the filing of such notice, the putative father's consent to adoption of the child shall not be required, he is not entitled to any further notice of the adoption proceedings, and any alleged parental rights and responsibilities of the putative father shall not be recognized thereafter in any court.

(3) After the timely filing of such petition, the court shall set a trial date upon proper notice to the parties not less than twenty nor more than thirty days after the date of such filing. If the mother contests the putative father's claim of paternity, the court shall order DNA testing to establish whether the putative father is the biological father. The court shall assess the costs of such testing between the parties in an equitable manner. Whether the putative father's consent to the adoption is required shall be determined pursuant to section 43-104.22. The court shall appoint a guardian ad litem to represent the best interests of the child.

(4)(a) The county court of the county where the child was born or the separate juvenile court having jurisdiction over the custody of the child shall have jurisdiction over proceedings under this section from the date of notice provided under section 43-104.12 or the last date of published notice under section 43-104.14, whichever notice is earlier, until thirty days after

the conclusion of adoption proceedings concerning the child, including appeals, unless such jurisdiction is transferred under subdivision (b) of this subsection.

(b) Except as otherwise provided in this subdivision, the court shall, upon the motion of any party, transfer the case to the district court for further proceedings on the matters of custody, visitation, and child support with respect to such child if (i) such court determines under section 43-104.22 that the consent of the putative father is required for adoption of the minor child and the putative father refuses such consent or (ii) the mother of the child, within thirty days after the conclusion of proceedings under this section, including appeals, has not executed a valid relinquishment and consent to the adoption. The court, upon its own motion, may retain the case for good cause shown.

Source: Laws 1975, LB 224, § 6; Laws 1995, LB 712, § 25; Laws 1998, LB 1041, § 8; Laws 1999, LB 594, § 14; Laws 2007, LB247, § 10.
Operative date June 1, 2007.

43-104.08 Child born out of wedlock; identify and inform biological father. Whenever a child is claimed to be born out of wedlock and the biological mother contacts an adoption agency or attorney to relinquish her rights to the child, or the biological mother joins in a petition for adoption to be filed by her husband, the agency or attorney contacted shall attempt to establish the identity of the biological father and further attempt to inform the biological father of his right to execute a relinquishment and consent to adoption, or a denial of paternity and waiver of rights, in the form mandated by section 43-106, pursuant to sections 43-104.08 to 43-104.25.

Source: Laws 1995, LB 712, § 1; Laws 2007, LB247, § 11.
Operative date June 1, 2007.

43-104.09 Child born out of wedlock; biological mother; affidavit; form. In all cases of adoption of a minor child born out of wedlock, the biological mother shall complete and sign an affidavit in writing and under oath. The affidavit shall be executed by the biological mother before or at the time of execution of the consent or relinquishment and shall be attached as an exhibit to any petition to finalize the adoption. If the biological mother is under the age of nineteen, the affidavit may be executed by the agency or attorney representing the biological mother based upon information provided by the biological mother. The affidavit shall be in substantially the following form:

AFFIDAVIT OF IDENTIFICATION

I,, the mother of a child, state under oath or affirm as follows:

- (1) My child was born, or is expected to be born, on the day of,, at, in the State of
- (2) I reside at, in the City or Village of, County of, State of
- (3) I am of the age of years, and my date of birth is
- (4) I acknowledge that I have been asked to identify the father of my child.
- (5) (CHOOSE ONE)

(5A) I know and am identifying the biological father (or possible biological fathers) as follows:

The name of the biological father is

His last-known home address is

His last-known work address is

He is years of age, or he is deceased, having died on or about the day of,, at, in the State of

He has been adjudicated to be the biological father by the Court of county, State of, case name, docket number

(For other possible biological fathers, please use additional sheets of paper as needed.)

(5B) I am unwilling or unable to identify the biological father (or possible biological fathers). I do not wish or I am unable to name the biological father of the child for the following reasons:

..... Conception of my child occurred as a result of sexual assault or incest

..... Providing notice to the biological father of my child would threaten my safety or the safety of my child

..... Other reason:

(6) If the biological mother is unable to name the biological father, the physical description of the biological father (or possible biological fathers) and other information which may assist in identifying him, including the city or county and state where conception occurred:

.....
.....
.....

(use additional sheets of paper as needed).

(7) Under penalty of perjury, the undersigned certifies that the statements set forth in this affidavit are true and correct.

(8) I have read this affidavit and have had the opportunity to review and question it. It was explained to me by

I am signing it as my free and voluntary act and understand the contents and the effect of signing it.

Dated this day of,

(Acknowledgment)

.....

(Signature)

Source: Laws 1995, LB 712, § 2; Laws 2007, LB247, § 12.
Operative date June 1, 2007.

43-104.12 Child born out of wedlock; agency or attorney; duty to inform biological father. In order to attempt to inform the biological father or possible biological fathers of the right to execute a relinquishment and consent to adoption or a denial of paternity and

waiver of rights, the agency or attorney representing the biological mother shall notify, by registered or certified mail, restricted delivery, return receipt requested:

(1) Any person adjudicated by a court in this state or by a court in another state or territory of the United States to be the biological father of the child;

(2) Any person who has filed a Request for Notification of Intended Adoption or a Notice of Objection to Adoption and Intent to Obtain Custody pursuant to sections 43-104.01 and 43-104.02;

(3) Any person who is recorded on the child's birth certificate as the child's father;

(4) Any person who might be the biological father of the child who was openly living with the child's biological mother within the twelve months prior to the birth of the child;

(5) Any person who has been identified as the biological father or possible biological father of the child by the child's biological mother pursuant to section 43-104.09;

(6) Any person who was married to the child's biological mother within six months prior to the birth of the child and prior to the execution of the relinquishment; and

(7) Any other person who the agency or attorney representing the biological mother may have reason to believe may be the biological father of the child.

Source: Laws 1995, LB 712, § 5; Laws 1999, LB 594, § 16; Laws 2007, LB247, § 13.
Operative date June 1, 2007.

43-104.13 Child born out of wedlock; notice to biological father; contents. The notice sent by the agency or attorney pursuant to section 43-104.12 shall be served sufficiently in advance of the birth of the child, whenever possible, to allow compliance with subdivision (1) of section 43-104.02 and shall state:

(1) The biological mother's name, the fact that she is pregnant or has given birth to the child, and the expected or actual date of delivery;

(2) That the child has been relinquished by the biological mother, that she intends to execute a relinquishment, or that the biological mother has joined or plans to join in a petition for adoption to be filed by her husband;

(3) That the person being notified has been identified as a possible biological father of the child;

(4) That the possible biological father may have certain rights with respect to such child if he is in fact the biological father;

(5) That the possible biological father has the right to (a) deny paternity, (b) waive any parental rights he may have, (c) relinquish and consent to adoption of the child, (d) file a Notice of Objection to Adoption and Intent to Obtain Custody pursuant to section 43-104.02, or (e) object to the adoption in a proceeding before any Nebraska court which has, prior to his receipt of this notice, adjudicated him to be the biological father of the child;

(6) That to deny paternity, to waive his parental rights, or to relinquish and consent to the adoption, the biological father must contact the undersigned agency or attorney representing the biological mother, and that if he wishes to object to the adoption and seek custody of the child he should seek legal counsel from his own attorney immediately; and

(7) That if he is the biological father and if the child is not relinquished for adoption, he has a duty to contribute to the support and education of the child and to the pregnancy-related expenses of the mother and a right to seek a court order for custody, parenting time, visitation, or other access with the child.

The agency or attorney representing the biological mother may enclose with the notice a document which is an admission or denial of paternity and a waiver of rights by the biological father, which the biological father may choose to complete, in the form mandated by section 43-106, and return to the agency or attorney.

Source: Laws 1995, LB 712, § 6; Laws 2007, LB247, § 14; Laws 2007, LB554, § 38.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 247, section 14, with LB 554, section 38, to reflect all amendments.

Note: The changes made by LB 247 became operative June 1, 2007. The changes made by LB 554 became operative January 1, 2008.

43-104.14 Child born out of wedlock; agency or attorney; duty to notify biological father by publication; when. (1) If the agency or attorney representing the biological mother is unable through reasonable efforts to locate and serve notice on the biological father or possible biological fathers as contemplated in sections 43-104.12 and 43-104.13, the agency or attorney shall notify the biological father or possible biological fathers by publication.

(2) The publication shall be made once a week for three consecutive weeks in a legal newspaper of general circulation in the Nebraska county or county of another state which is most likely to provide actual notice to the biological father. The publication shall include:

(a) The first name or initials of the father or possible father or the entry "John Doe, real name unknown", if applicable;

(b) A description of the father or possible father if his first name is or initials are unknown;

(c) The approximate date of conception of the child and the city and state in which conception occurred, if known;

(d) The date of birth or expected birth of the child;

(e) That he has been identified as the biological father or possible biological father of a child whom the biological mother currently intends to place for adoption and the approximate date that placement will occur;

(f) That he has the right to (i) deny paternity, (ii) waive any parental rights he may have, (iii) relinquish and consent to adoption of the child, (iv) file a Notice of Objection to Adoption and Intent to Obtain Custody pursuant to section 43-104.02, or (v) object to the adoption in a proceeding before any Nebraska court which has adjudicated him to be the biological father of the child prior to his receipt of notice; and

(g) That (i) in order to deny paternity, waive his parental rights, relinquish and consent to the adoption, or receive additional information to determine whether he is the father of the child in question, he must contact the undersigned agency or attorney representing the biological

mother and (ii) if he wishes to object to the adoption and seek custody of the child, he must seek legal counsel from his own attorney immediately.

Source: Laws 1995, LB 712, § 7; Laws 2007, LB247, § 15.
Operative date June 1, 2007.

43-104.17 Child born out of wedlock; petition; evidence of compliance required; notice to biological father; when. In all cases of adoption of a minor child born out of wedlock, the petition to finalize the adoption shall specifically allege compliance with sections 43-104.08 to 43-104.16, and shall attach as exhibits all documents which are evidence of such compliance. No notice of the filing of the petition to finalize or the hearing on the petition shall be given to a biological father or putative biological father who (1) executed a valid relinquishment and consent or a valid denial of paternity and waiver of rights pursuant to section 43-104.11, (2) was provided notice under sections 43-104.12 to 43-104.14 and failed to timely file a Notice of Objection to Adoption and Intent to Obtain Custody pursuant to section 43-104.02 or petition pursuant to section 43-104.05, or (3) is not required to consent to the adoption pursuant to proceedings conducted under section 43-104.22.

Source: Laws 1995, LB 712, § 10; Laws 2007, LB247, § 16.
Operative date June 1, 2007.

43-104.22 Child born out of wedlock; hearing; paternity of child; father's consent required; when; determination of custody. At any hearing to determine the parental rights of an adjudicated biological father or putative biological father of a minor child born out of wedlock and whether such father's consent is required for the adoption of such child, the court shall receive evidence with regard to the actual paternity of the child and whether such father is a fit, proper, and suitable custodial parent for the child. The court shall determine that such father's consent is not required for a valid adoption of the child upon a finding of one or more of the following:

- (1) The father abandoned or neglected the child after having knowledge of the child's birth;
- (2) The father is not a fit, proper, and suitable custodial parent for the child;
- (3) The father had knowledge of the child's birth and failed to provide reasonable financial support for the mother or child;
- (4) The father abandoned the mother without reasonable cause and with knowledge of the pregnancy;
- (5) The father had knowledge of the pregnancy and failed to provide reasonable support for the mother during the pregnancy;
- (6) The child was conceived as a result of a nonconsensual sex act or an incestual act;
- (7) Notice was provided pursuant to sections 43-104.12 to 43-104.14 and the putative father failed to timely file a Notice of Objection to Adoption and Intent to Obtain Custody pursuant to section 43-104.02;
- (8) The putative father failed to timely file a petition to adjudicate a Notice of Objection to Adoption and Intent to Obtain Custody pursuant to section 43-104.05;

(9) Notice was provided to an adjudicated biological father through service of process under applicable state law and he failed to object to the adoption or failed to appear at the hearing conducted under section 43-104.25;

(10) The father executed a valid relinquishment or consent to adoption; or

(11) The man is not, in fact, the biological father of the child.

The court shall determine the custody of the child according to the best interest of the child, weighing the superior rights of a biological parent who has been found to be a fit, proper, and suitable parent against any detriment the child would suffer if removed from the custody of persons with whom the child has developed a substantial relationship.

Source: Laws 1995, LB 712, § 15; Laws 1999, LB 594, § 17; Laws 2007, LB247, § 17.
Operative date June 1, 2007.

43-104.25 Child born out of wedlock; biological father; applicability of sections. With respect to any person who has been adjudicated by a Nebraska court of competent jurisdiction to be the biological father of a child born out of wedlock who is the subject of a proposed adoption:

(1) Such person shall not be construed to be a putative father for purposes of sections 43-104.01 to 43-104.05 and shall not be subject to the provisions of such sections as applied to such fathers; and

(2)(a) If the adjudicated biological father has been provided notice in substantial compliance with section 43-104.12 or section 43-104.14, whichever notice is earlier, and he has not executed a valid relinquishment or consent to the adoption, the mother or lawful custodian of the child or his or her agent shall file a motion in the court with jurisdiction of the custody of the child for a hearing to determine whether such father's consent to the adoption is required and whether the court shall give its consent to the adoption;

(b) Notice of the motion and hearing shall be served on the adjudicated biological father in the manner provided for service of process under applicable state law; and

(c) Within thirty days after service of notice under subdivision (b) of this subdivision, the court shall conduct an evidentiary hearing to determine whether the adjudicated biological father's consent to the adoption is required and whether the court shall give its consent to the adoption. Whether such father's consent is required for the proposed adoption shall be determined pursuant to section 43-104.22.

Source: Laws 2007, LB247, § 18.
Operative date June 1, 2007.

43-105 Substitute consents. (1) If consent is not required of both parents of a child born in lawful wedlock if living, the surviving parent of a child born in lawful wedlock, or the mother or mother and father of a child born out of wedlock, because of the provisions of subdivision (1)(c) of section 43-104, substitute consents shall be filed as follows:

(a) Consent to the adoption of a minor child who has been committed to the Department of Health and Human Services may be given by the department or its duly authorized agent in accordance with section 43-906;

(b) When a parent has relinquished a minor child for adoption to any child placement agency licensed or approved by the department or its duly authorized agent, consent to the adoption of such child may be given by such agency; and

(c) In all other cases when consent cannot be given as provided in subdivision (1)(c) of section 43-104, consent shall be given by the guardian or guardian ad litem of such minor child appointed by a court, which consent shall be authorized by the court having jurisdiction of such guardian or guardian ad litem.

(2) Substitute consent provisions of this section do not apply to a biological father whose consent is not required under section 43-104.22.

Source: Laws 1943, c. 104, § 4(2), p. 350; R.S.1943, § 43-105; Laws 1967, c. 248, § 2, p. 653; Laws 1988, LB 790, § 23; Laws 1989, LB 22, § 2; Laws 1995, LB 712, § 26; Laws 1996, LB 1044, § 110; Laws 1996, LB 1155, § 8; Laws 1998, LB 1041, § 9; Laws 2007, LB247, § 19.
Operative date June 1, 2007.

Cross Reference

Terminated parental rights, substitute consents, see section 43-293.

43-106 Consents; signature; witnesses; acknowledgment; certified copy of orders. Consents required to be given under sections 43-104 and 43-105, except under subdivision (1)(b) of section 43-104, must be acknowledged before an officer authorized to acknowledge deeds in this state and signed in the presence of at least one witness, in addition to the officer. Consents under subdivision (1)(b) of section 43-104 shall be shown by a duly certified copy of order of the court required to grant such consent.

Source: Laws 1943, c. 104, § 4(3), p. 351; R.S.1943, § 43-106; Laws 1951, c. 128, § 1, p. 547; Laws 1965, c. 233, § 1, p. 678; Laws 2007, LB247, § 20.
Operative date June 1, 2007.

43-107 Investigation by Department of Health and Human Services; adoptive home studies required; when; medical history; required; exceptions; report required. (1)(a) For adoption placements occurring or in effect prior to January 1, 1994, upon the filing of a petition for adoption, the county judge shall, except in the adoption of children by stepparents when the requirement of an investigation is discretionary, request the Department of Health and Human Services or any child placement agency licensed by the department to examine the allegations set forth in the petition and to ascertain any other facts relating to such minor child and the person or persons petitioning to adopt such child as may be relevant to the propriety of such adoption, except that the county judge shall not be required to request such an examination if the judge determines that information compiled in a previous examination or study is sufficiently current and comprehensive. Upon the request being made, the department or other licensed agency shall conduct an investigation and report its findings to the county judge in writing at least one week prior to the date set for hearing.

(b)(i) For adoption placements occurring on or after January 1, 1994, a preplacement adoptive home study shall be filed with the court prior to the hearing required in section 43-103, which study is completed by the Department of Health and Human Services or a licensed child placement agency within one year before the date on which the adoptee is placed with the petitioner or petitioners and indicates that the placement of a child for the purpose of adoption would be safe and appropriate.

(ii) An adoptive home study shall not be required when the petitioner is a stepparent of the adoptee unless required by the court, except that for petitions filed on or after January 1, 1994, the judge shall order the petitioner or his or her attorney to request the Nebraska State Patrol to file a national criminal history record information check and to request the department to conduct and file a check of the central register created in section 28-718 for any history of the petitioner of behavior injurious to or which may endanger the health or morals of a child. An adoption decree shall not be issued until such records are on file with the court. The petitioner shall pay the cost of the national criminal history record information check and the check of the central register.

(iii) The placement of a child for foster care made by or facilitated by the department or a licensed child placement agency in the home of a person who later petitions the court to adopt the child shall be exempt from the requirements of a preplacement adoptive home study. The petitioner or petitioners who meet such criteria shall have a postplacement adoptive home study completed by the department or a licensed child placement agency and filed with the court at least one week prior to the hearing for adoption.

(iv) A voluntary placement for purposes other than adoption made by a parent or guardian of a child without assistance from an attorney, physician, or other individual or agency which later results in a petition for the adoption of the child shall be exempt from the requirements of a preplacement adoptive home study. The petitioner or petitioners who meet such criteria shall have a postplacement adoptive home study completed by the department or a licensed child placement agency and filed with the court at least one week prior to the hearing for adoption.

(v) The adoption of an adult child as provided in subsection (2) of section 43-101 shall be exempt from the requirements of an adoptive home study unless the court specifically orders otherwise. The court may order an adoptive home study, a background investigation, or both if the court determines that such would be in the best interests of the adoptive party or the person to be adopted.

(vi) Any adoptive home study required by this section shall be conducted by the department or a licensed child placement agency at the expense of the petitioner or petitioners unless such expenses are waived by the department or licensed child placement agency. The department or licensed agency shall determine the fee or rate for the adoptive home study.

(vii) The preplacement or postplacement adoptive home study shall be performed as prescribed in rules and regulations of the department and shall include at a minimum an examination into the facts relating to the petitioner or petitioners as may be relevant to the propriety of such adoption. Such rules and regulations shall require an adoptive home study

to include a national criminal history record information check and a check of the central register created in section 28-718 for any history of the petitioner or petitioners of behavior injurious to or which may endanger the health or morals of a child.

(2) Upon the filing of a petition for adoption, the judge shall require that a complete medical history be provided on the child, except that in the adoption of a child by a stepparent the provision of a medical history shall be discretionary. A medical history shall be provided, if available, on the biological mother and father and their biological families, including, but not limited to, siblings, parents, grandparents, aunts, and uncles, unless the child is foreign born or was abandoned. The medical history or histories shall be reported on a form provided by the department and filed along with the report of adoption as provided by section 71-626. If the medical history or histories do not accompany the report of adoption, the department shall inform the court and the State Court Administrator. The medical history or histories shall be made part of the court record. After the entry of a decree of adoption, the court shall retain a copy and forward the original medical history or histories to the department. This subsection shall only apply when the relinquishment or consent for an adoption is given on or after September 1, 1988.

Source: Laws 1943, c. 104, § 5, p. 351; R.S.1943, § 43-107; Laws 1978, LB 566, § 1; Laws 1980, LB 681, § 1; Laws 1988, LB 372, § 1; Laws 1988, LB 301, § 7; Laws 1989, LB 231, § 1; Laws 1993, LB 16, § 2; Laws 1996, LB 1044, § 113; Laws 1997, LB 307, § 21; Laws 1998, LB 1041, § 10; Laws 1999, LB 594, § 18; Laws 2004, LB 1005, § 4; Laws 2007, LB296, § 67.
Operative date July 1, 2007.

(b) WARDS AND CHILDREN WITH SPECIAL NEEDS

43-118 Assistance; conditions. All actions of the Department of Health and Human Services under the programs authorized by sections 43-117 to 43-117.02 shall be subject to the following criteria:

(1) The child so adopted shall have been a child for whom adoption would not have been possible without the financial aid provided for by sections 43-117 to 43-117.02; and

(2) The department shall adopt and promulgate rules and regulations for the administration of sections 43-117 to 43-118.

Source: Laws 1971, LB 425, § 2; Laws 1990, LB 1070, § 3; Laws 1996, LB 1044, § 117; Laws 2007, LB296, § 68.
Operative date July 1, 2007.

(c) RELEASE OF INFORMATION

43-119 Definitions, where found. For purposes of sections 43-119 to 43-146.16, unless the context otherwise requires, the definitions found in sections 43-121 to 43-123.01 shall be used.

Source: Laws 1980, LB 992, § 1; Laws 1988, LB 372, § 5; Laws 1997, LB 307, § 22; Laws 2007, LB296, § 69.
Operative date July 1, 2007.

43-122 Department, defined. Department shall mean the Department of Health and Human Services.

Source: Laws 2007, LB296, § 70.
Operative date July 1, 2007.

43-123.01 Medical history, defined. Medical history shall mean medical history as defined by the department in its rules and regulations.

Source: Laws 1988, LB 372, § 22; Laws 1996, LB 1044, § 120; Laws 2007, LB296, § 71.
Operative date July 1, 2007.

43-124 Department; provide relative consent form. The department shall provide a form which may be signed by a relative indicating the fact that such relative consents to his or her name being released to such relative's adopted person as provided by sections 43-113, 43-119 to 43-146.16, 71-626, 71-626.01, and 71-627.02. Such consent shall be effective as of the time of filing the form with the department.

Source: Laws 1980, LB 992, § 6; Laws 1997, LB 307, § 24; Laws 2007, LB296, § 72.
Operative date July 1, 2007.

43-125 Relative consent form. The form provided by section 43-124 shall contain the following information:

- (1) The name of the person completing the form and, if different, the name of such person at the time of birth of the adopted person;
- (2) The relationship of the person to the adopted person;
- (3) The date of birth of the adopted person;
- (4) The sex of the adopted person;
- (5) The place of birth of the adopted person;
- (6) Authorization that the name, last-known address, and last-known telephone number of the relative and the original birth certificate of the adopted person may be released to the adopted person as provided by sections 43-113, 43-119 to 43-146.16, 71-626, 71-626.01, and 71-627.02; and
- (7) A notice in the following form:

IMPORTANT NOTICE

You do not have to sign this form. If you do sign it, you are entitled to a copy of it. Your signature on this form allows the Department of Health and Human Services to give your name and other information to the adopted person designated, upon his or her written request after reaching twenty-five years of age. You may file additional copies of this consent if your name or address changes. You may revoke this consent at any time by filing a revocation of consent with the Department of Health and Human Services.

Source: Laws 1980, LB 992, § 7; Laws 1997, LB 307, § 25; Laws 2007, LB296, § 73.
Operative date July 1, 2007.

43-126 Relative; revocation of consent; form. At any time after signing the consent form, a relative may revoke such consent form. A form for revocation of consent shall be provided by the department. The revocation shall be effective as of the time of filing the form with the department. The revocation form shall contain the following notice:

IMPORTANT NOTICE

You do not have to sign this form. If you do sign it, you are entitled to a copy of it. Your signature on this form means that the Department of Health and Human Services will not disclose your name or address to any person without a court order. If you sign this form and later decide you do want your name and address given to a relative properly requesting the information, you may file another consent for that purpose.

Source: Laws 1980, LB 992, § 8; Laws 1997, LB 307, § 26; Laws 2007, LB296, § 74.
Operative date July 1, 2007.

43-127 Relative; consent and revocation forms; notarized; filing. The forms provided by sections 43-124 and 43-126 shall be notarized and filed with the department which shall keep such forms with all other records of an individual adopted person.

Source: Laws 1980, LB 992, § 9; Laws 1997, LB 307, § 27; Laws 2007, LB296, § 75.
Operative date July 1, 2007.

43-129 Original birth certificate; access by medical professionals; when. If at any time an individual licensed to practice medicine and surgery pursuant to the Medicine and Surgery Practice Act or licensed to engage in the practice of psychology pursuant to the Psychology Practice Act, through his or her professional relationship with an adopted person, determines that information contained on the original birth certificate of the adopted person may be necessary for the treatment of the health of the adopted person, whether physical or mental in nature, he or she may petition a court of competent jurisdiction for the release of the information contained on the original birth certificate, and the court may release the information on good cause shown.

Source: Laws 1980, LB 992, § 11; Laws 1988, LB 372, § 23; Laws 1994, LB 1210, § 6; Laws 1999, LB 366, § 5; Laws 2007, LB463, § 1131.
Operative date December 1, 2008.

Cross Reference

Medicine and Surgery Practice Act, see section 38-2001.

Psychology Practice Act, see section 38-3101.

43-130 Adopted person; request for information; form. Except as otherwise provided in the Nebraska Indian Child Welfare Act, an adopted person twenty-five years of age or older born in this state who desires access to the names of relatives or access to his or her original certificate of birth shall file a written request for such information with the department. The department shall provide a form for making such a request.

Source: Laws 1980, LB 992, § 12; Laws 1985, LB 255, § 26; Laws 1997, LB 307, § 28; Laws 2007, LB296, § 76.
Operative date July 1, 2007.

Cross Reference

Nebraska Indian Child Welfare Act, see section 43-1501.

43-131 Release of information; procedure. (1) Upon receipt of a request for information, the department shall check the records of the adopted person making the request to determine whether the consent form provided by section 43-124 has been signed and filed by any relative of the adopted person and whether an unrevoked nonconsent form is on file from a biological parent or parents pursuant to section 43-132 or from an adoptive parent or parents pursuant to section 43-143.

(2) If the consent form has been signed and filed and has not been revoked and if no nonconsent form has been filed by an adoptive parent or parents pursuant to section 43-143, the department shall release the information on such form to the adopted person.

(3) If no consent forms have been filed, or if the consent form has been revoked, and if no nonconsent form has been filed pursuant to section 43-143, the following information shall be released to the adopted person:

(a) The name and address of the court which issued the adoption decree;

(b) The name and address of the child placement agency, if any, involved in the adoption; and

(c) The fact that an agency may assist the adopted person in searching for relatives as provided in sections 43-132 to 43-141.

(4) The provisions of this section shall not apply to persons subject to the Nebraska Indian Child Welfare Act.

Source: Laws 1980, LB 992, § 13; Laws 1985, LB 255, § 27; Laws 1997, LB 307, § 29; Laws 2007, LB296, § 77.
Operative date July 1, 2007.

Cross Reference

Nebraska Indian Child Welfare Act, see section 43-1501.

43-132 Biological parent; notice of nonconsent; filing. A biological parent or parents may at any time, if they desire, file a notice of nonconsent with the department stating that at no time after his or her death and prior to the death of his or her spouse, if such spouse is not a biological parent, may any information on the adopted person's original birth certificate be released to such adopted person. The provisions of this section shall not apply to persons subject to the Nebraska Indian Child Welfare Act.

Source: Laws 1980, LB 992, § 14; Laws 1985, LB 255, § 28; Laws 1997, LB 307, § 30; Laws 2007, LB296, § 78.
Operative date July 1, 2007.

Cross Reference

Nebraska Indian Child Welfare Act, see section 43-1501.

43-133 Biological parent; nonconsent form. The nonconsent form provided for in section 43-132 shall contain the following information:

- (1) The name of the person completing the form and, if different, the name of such person at the time of birth of the adopted person;
- (2) The relationship of the person to the adopted person;
- (3) The date of birth of the adopted person;
- (4) The sex of the adopted person;
- (5) The place of birth of the adopted person;
- (6) A statement that no information concerning the information contained in the original birth certificate of the adopted person shall be released following the death of the parent or parents signing the form and such information shall not be released to the adopted person prior to the death of the spouse of such parent or parents, if such spouse is not a biological parent; and
- (7) A notice in the following form:

IMPORTANT NOTICE

You do not have to sign this form. If you do sign it, you are entitled to a copy of it. Your signature on this form means that the Department of Health and Human Services will not disclose any information contained on the birth certificate of the adopted person to any person following your death and prior to the death of your spouse, if such spouse is not a biological parent, without a court order. If you later decide that you do not object to the release of such information you may file a form stating that purpose.

Source: Laws 1980, LB 992, § 15; Laws 1997, LB 307, § 31; Laws 2007, LB296, § 79.
Operative date July 1, 2007.

43-134 Biological parent; revocation of nonconsent; form. At any time after signing the notice of nonconsent provided for in section 43-132, the parent or parents may revoke such notice. A form of revocation shall be provided by the department and shall take effect at the time of filing of the form with the department. The revocation form shall contain the following notice:

IMPORTANT NOTICE

You do not have to sign this form. If you do sign it, you are entitled to a copy of it. Your signature on this form means that the Department of Health and Human Services may disclose any information contained on the birth certificate of the adopted person following your death. If you sign this form and later decide you do not want this information released following your death and prior to the death of your spouse, if such spouse is not a biological parent, you may file another form for that purpose.

Source: Laws 1980, LB 992, § 16; Laws 1997, LB 307, § 32; Laws 2007, LB296, § 80.
Operative date July 1, 2007.

43-135 Biological parent; deceased; release of information. If the department has information indicating that both biological parents of the adopted person are deceased, or if only one biological parent is known and information indicates that such parent is

deceased, and no nonconsent form, as provided in section 43-132 or 43-143, has been filed, all information on the adopted person's original birth certificate regarding such deceased parent or parents shall be released to the adopted person notwithstanding the fact that no consent form was signed and filed by such deceased parent or parents prior to death.

Source: Laws 1980, LB 992, § 17; Laws 1997, LB 307, § 33; Laws 2007, LB296, § 81.
Operative date July 1, 2007.

43-137 Adopted person; contact child placement agency or department; when. If an adopted person twenty-five years of age or older, after following the procedures set forth in sections 43-130 and 43-131 is not able to obtain information about such person's relatives, such person may then contact the child placement agency which handled the adoption if the name of the agency has been given to the adopted person by the department. If it is not feasible for the adopted person to contact the agency, such person may contact the department.

Source: Laws 1980, LB 992, § 19; Laws 1997, LB 307, § 34; Laws 2007, LB296, § 82.
Operative date July 1, 2007.

43-138 Department or agency; acquire information in court or department records; disclosure requirements. After being contacted by an adopted person, if no valid nonconsent form, as provided in section 43-132 or 43-143, is on file, the department or agency as the case may be shall apply to the clerk of the court which issued the adoption decree or the department for any information in the records of the court or the department regarding the adopted person or his or her relatives, including names, locations, and any birth, marriage, divorce, or death certificates. Any information which is available shall be given only to the department or agency. The department or agency shall keep such information confidential and shall not disclose it either directly or indirectly to the adopted person. The provisions of this section shall not apply to persons subject to the Nebraska Indian Child Welfare Act.

Source: Laws 1980, LB 992, § 20; Laws 1985, LB 255, § 29; Laws 1993, LB 205, § 1; Laws 1997, LB 307, § 35; Laws 1998, LB 1041, § 14; Laws 2007, LB296, § 83.
Operative date July 1, 2007.

Cross Reference

Nebraska Indian Child Welfare Act, see section 43-1501.

43-139 Court or department records provided; record required. When any information is provided to the department or agency pursuant to section 43-138, the person providing the information shall record in the records of the adopted person the nature of the information disclosed, to whom the information was disclosed, and the date of the disclosure.

Source: Laws 1980, LB 992, § 21; Laws 1993, LB 205, § 2; Laws 1997, LB 307, § 36; Laws 2007, LB296, § 84.
Operative date July 1, 2007.

43-140 Department or agency; contact relative; limitations; reunion or release of information; when. (1) Upon determining the identity and location of the relative being

sought, the department or agency shall attempt to contact the relative to determine such relative's willingness to be contacted by the adopted person.

(2) In contacting the relative, the department or agency shall not discuss or reveal in any other manner to any person other than that particular relative who is being sought the nature of the contact, the name, nature, or business of the adoption agency, or any other information which might indicate or imply that such relative is the biological parent of an adopted person.

(3) In contacting the relative, the department or agency shall not reveal the identity or any other information about the adopted person.

(4) No reunion of a relative and an adopted person shall be arranged, nor shall any information about the relative be released to the adopted person until such relative has signed the consent form provided by section 43-124 and the form has been filed with the department.

Source: Laws 1980, LB 992, § 22; Laws 1997, LB 307, § 37; Laws 2007, LB296, § 85.
Operative date July 1, 2007.

43-141 Department or agency; fees; rules and regulations. The department or agency may charge a reasonable fee in an amount established by the department or agency in rules and regulations to recover expenses in carrying out sections 43-137 to 43-140. The department or agency shall use the fees to defray costs incurred to carry out such sections. The department or agency may waive the fee if the requesting party shows that the fee would work an undue financial hardship on the party.

The department may adopt and promulgate rules and regulations to carry out such sections.

Source: Laws 1980, LB 992, § 23; Laws 1993, LB 205, § 3; Laws 1997, LB 307, § 38; Laws 2007, LB296, § 86.
Operative date July 1, 2007.

43-142 Department or agency; file report with clerk. The department or an agency which receives information as provided in section 43-138 shall file a written report with the clerk of the court within nine months of receipt of the information. The report shall indicate whether the relative has been located and whether a contact between the relative and the adopted person has been arranged or has occurred. If the relative has not been located, the report shall set forth the efforts made to identify and locate the relative.

Source: Laws 1980, LB 992, § 24; Laws 1997, LB 307, § 39; Laws 2007, LB296, § 87.
Operative date July 1, 2007.

43-143 Adoptive parent; notice of nonconsent; filing. For adoptions in which the relinquishment or consent for adoption was given prior to July 20, 2002: An adoptive parent or parents may at any time, if they desire, file a notice of nonconsent with the department stating that at no time prior to his or her death or the death of both parents if each signed the form may any information on the adopted person's original birth certificate be released to such adopted person. The provisions of this section shall not apply to persons subject to the Nebraska Indian Child Welfare Act.

Source: Laws 1980, LB 992, § 25; Laws 1985, LB 255, § 30; Laws 1997, LB 307, § 40; Laws 2002, LB 952, § 3; Laws 2007, LB296, § 88.
Operative date July 1, 2007.

Cross Reference

Nebraska Indian Child Welfare Act, see section 43-1501.

43-144 Adoptive parent; nonconsent form. The nonconsent form provided for in section 43-143 shall contain the following information:

- (1) The name of the person completing the form and, if different, the name of such person at the time of birth of the adopted person;
- (2) The relationship of the person to the adopted person;
- (3) The date of birth of the adopted person;
- (4) The sex of the adopted person;
- (5) The place of birth of the adopted person;
- (6) A statement that no information concerning the information contained in the original birth certificate of the adopted person shall be released prior to the death of the adoptive parent or parents signing the form; and
- (7) A notice in the following form:

IMPORTANT NOTICE

You do not have to sign this form. If you do sign it, you are entitled to a copy of it. Your signature on this form means that the Department of Health and Human Services will not disclose any information contained on the birth certificate of the adopted person to any person prior to your death and the death of your spouse, if he or she signed the form, without a court order. If you later decide that you do not object to the release of such information you may file a form stating that purpose.

Source: Laws 1980, LB 992, § 26; Laws 1997, LB 307, § 41; Laws 2007, LB296, § 89.
Operative date July 1, 2007.

43-145 Adoptive parent; revocation of nonconsent; form. At any time after signing the notice of nonconsent provided for in section 43-143, the adoptive parent or parents may revoke such notice. A form of revocation shall be provided by the department and shall take effect at the time of filing of the form with the department. The revocation form shall contain the following notice:

IMPORTANT NOTICE

You do not have to sign this form. If you do sign it, you are entitled to a copy of it. Your signature on this form means that the Department of Health and Human Services may disclose any information contained on the birth certificate of the adopted person pursuant to sections 43-113, 43-119 to 43-146.16, 71-626, 71-626.01, and 71-627.02. If you sign this form and later decide you do not want this information released prior to your death you may file another form for that purpose.

Source: Laws 1980, LB 992, § 27; Laws 1997, LB 307, § 42; Laws 2007, LB296, § 90.
Operative date July 1, 2007.

43-146 Forms; notarized; filing. The forms provided by sections 43-132, 43-134, 43-143, and 43-145 shall be notarized and filed with the department which shall keep such forms with all other records of an individual adopted person.

Source: Laws 1980, LB 992, § 28; Laws 1997, LB 307, § 43; Laws 2007, LB296, § 91.
Operative date July 1, 2007.

43-146.02 Medical history; requirements. A child placement agency, the department, or a private agency handling the adoption, as the case may be, shall maintain and shall provide to the adopting parents upon placement of the person with such parents and to the adopted person, upon his or her request, the available medical history of the person placed for adoption and of the biological parents. The medical history shall not include the names of the biological parents of the adopted person or any other identifying information.

Source: Laws 1988, LB 372, § 7; Laws 1997, LB 307, § 44; Laws 2007, LB296, § 92.
Operative date July 1, 2007.

43-146.03 Information on original birth certificate; release; when. If at any time an individual licensed to practice medicine and surgery pursuant to the Medicine and Surgery Practice Act or licensed to engage in the practice of psychology pursuant to the Psychology Practice Act, through his or her professional relationship with an adopted person, determines that information contained on the original birth certificate of the adopted person may be necessary for the treatment of the health of the adopted person, whether physical or mental in nature, he or she may petition a court of competent jurisdiction for the release of the information contained on the original birth certificate, and the court may release the information on good cause shown.

Source: Laws 1988, LB 372, § 8; Laws 1994, LB 1210, § 7; Laws 1999, LB 366, § 6; Laws 2007, LB463, § 1132.
Operative date December 1, 2008.

Cross Reference

Medicine and Surgery Practice Act, see section 38-2001.

Psychology Practice Act, see section 38-3101.

43-146.04 Adopted person; request for information; form. An adopted person twenty-one years of age or older born in this state who desires access to the names of relatives or access to his or her original certificate of birth shall file a written request for such information with the department. The department shall provide a form for making such request.

Source: Laws 1988, LB 372, § 9; Laws 1997, LB 307, § 45; Laws 2007, LB296, § 93.
Operative date July 1, 2007.

43-146.05 Release of information; procedure. (1) Upon receipt of a request for information made under section 43-146.04, the department shall check the records of the adopted person to determine whether an unrevoked nonconsent form is on file from a biological parent pursuant to section 43-146.06.

(2) If no nonconsent form has been filed pursuant to section 43-146.06, the following information shall be released to the adopted person:

- (a) The name and address of the court which issued the adoption decree;
- (b) The name and address of the child placement agency, if any, involved in the adoption;
- (c) The fact that an agency or the department may assist the adopted person in searching for relatives as provided in sections 43-146.10 to 43-146.14;
- (d) A copy of the person's original birth certificate; and
- (e) A copy of the person's medical history and any medical records on file.

(3) If an unrevoked nonconsent form has been filed pursuant to section 43-146.06, no information may be released to the adopted person except a copy of the person's medical history as provided in section 43-107 if requested. The medical history shall not include the names of the biological parents or relatives of the adopted person or any other identifying information.

Source: Laws 1988, LB 372, § 10; Laws 1997, LB 307, § 46; Laws 2007, LB296, § 94.
Operative date July 1, 2007.

43-146.06 Biological parent; notice of nonconsent; filing; failure to sign; effect. A biological parent may at any time file a notice of nonconsent with the department stating that at no time prior to his or her death may any information on the adopted person's original birth certificate or any other identifying information, except medical histories as provided in section 43-107, be released to such adopted person. Failure by a biological parent to sign the notice of nonconsent shall be deemed a notice of consent by such parent to release the adopted person's original birth certificate to such adopted person.

Source: Laws 1988, LB 372, § 11; Laws 1997, LB 307, § 47; Laws 2007, LB296, § 95.
Operative date July 1, 2007.

43-146.07 Biological parent; nonconsent form. The nonconsent form provided for in section 43-146.06 shall be designed by the department and shall contain the following information:

- (1) The name of the person completing the form and, if different, the name of such person at the time of birth of the adopted person;
- (2) The relationship of the person to the adopted person;
- (3) The date of birth of the adopted person;
- (4) The sex of the adopted person;
- (5) The place of birth of the adopted person;

(6) A statement that no information contained in the original birth certificate or any other identifying information, except medical histories as provided in section 43-107, shall be released prior to the death of the parent signing the form;

(7) A statement that the person signing understands the effect and consequences of filing or not filing a nonconsent form; and

(8) A notice in the following form:

IMPORTANT NOTICE

You do not have to sign this form. If you do sign it, you are entitled to a copy of it. Your signature on this form means that the Department of Health and Human Services will not disclose any information contained in the original birth certificate of the adopted person or any other identifying information to any person prior to your death without a court order. If you later decide that you do not object to the release of such information, you may file a form stating that purpose.

Source: Laws 1988, LB 372, § 12; Laws 1997, LB 307, § 48; Laws 2007, LB296, § 96.
Operative date July 1, 2007.

43-146.08 Biological parent; revocation of nonconsent; form. At any time after signing the notice of nonconsent provided for in section 43-146.06, the biological parent may revoke such notice. A form of revocation shall be provided by the department and shall take effect at the time of filing of the form with the department. The revocation form shall contain the following notice:

IMPORTANT NOTICE

You do not have to sign this form. If you do sign it, you are entitled to a copy of it. Your signature on this form means that the Department of Health and Human Services may at any time disclose to the adopted person any information contained on the original birth certificate of the adopted person.

Source: Laws 1988, LB 372, § 13; Laws 1997, LB 307, § 49; Laws 2007, LB296, § 97.
Operative date July 1, 2007.

43-146.09 Biological parent; deceased; release of information. If the department has verified information indicating that both biological parents of the adopted person are deceased or if only one biological parent is known and verified information indicates that such parent is deceased, all information on the adopted person's original birth certificate regarding such deceased parent or parents shall be released to the adopted person upon request. The department shall establish a policy for verifying information about the death of the biological parent or parents.

Source: Laws 1988, LB 372, § 14; Laws 1997, LB 307, § 50; Laws 2007, LB296, § 98.
Operative date July 1, 2007.

43-146.10 Adopted person; contact child placement agency or department; when. If an adopted person twenty-one years of age or older, after following the procedures set forth in sections 43-146.04 and 43-146.05, is unable to obtain information about the

adopted person's relatives and there is no unrevoked nonconsent form as provided in section 43-146.06 on file with the department, such person may then contact the child placement agency which handled the adoption or the department.

Source: Laws 1988, LB 372, § 15; Laws 1997, LB 307, § 51; Laws 2007, LB296, § 99.
Operative date July 1, 2007.

43-146.11 Department or agency; acquire information in court or department records; disclosure requirements. After being contacted by an adopted person as provided in section 43-146.10, the department or agency, as the case may be, shall verify that no unrevoked nonconsent form is on file with the department. If an unrevoked nonconsent form is not on file, the department or agency, as the case may be, shall apply to the clerk of the court which issued the adoption decree or the department for any information in the court or department records regarding the adopted person or his or her relatives, including names, locations, and any birth, marriage, divorce, or death certificates. Any information which is available shall be given by the court or department only to the department or agency. The department or agency shall keep such information confidential.

Source: Laws 1988, LB 372, § 16; Laws 1993, LB 205, § 4; Laws 1997, LB 307, § 52; Laws 1998, LB 1041, § 15; Laws 2007, LB296, § 100.
Operative date July 1, 2007.

43-146.12 Court or department records provided; record required. When any information is provided to the department or agency pursuant to section 43-146.11, the person providing the information shall record in the records of the adopted person the nature of the information disclosed, to whom the information was disclosed, and the date of the disclosure.

Source: Laws 1988, LB 372, § 17; Laws 1993, LB 205, § 5; Laws 1997, LB 307, § 53; Laws 2007, LB296, § 101.
Operative date July 1, 2007.

43-146.13 Department or agency; contact relative; release of information; condition. (1) Upon determining the identity and location of the relative being sought, the department or agency shall attempt to contact the relative to determine such relative's willingness to be contacted by the adopted person.

(2) Information about the relative shall not be released to the adopted person by the department or agency unless such relative agrees to be contacted by the adopted person.

Source: Laws 1988, LB 372, § 18; Laws 1997, LB 307, § 54; Laws 2007, LB296, § 102.
Operative date July 1, 2007.

43-146.14 Department or agency; fees; department; rules and regulations. The department or agency may charge a reasonable fee in an amount established by the department or agency in rules and regulations to recover expenses in carrying out sections 43-146.10 to 43-146.13. The department or agency shall use the fees to defray costs incurred to carry out

such sections. The department or agency may waive the fee if the requesting party shows that the fee would work an undue financial hardship on the party.

The department may adopt and promulgate rules and regulations to carry out sections 43-123.01 and 43-146.01 to 43-146.16.

Source: Laws 1988, LB 372, § 19; Laws 1993, LB 205, § 6; Laws 1997, LB 307, § 55; Laws 2007, LB296, § 103.
Operative date July 1, 2007.

43-146.15 Department or agency; written report; contents. The department or an agency which receives information as provided in section 43-146.11 shall file a written report with the clerk of the court or department within nine months of receipt of the information. The report shall indicate whether the relative has been located and whether a contact between the relative and the adopted person has been arranged or has occurred. If the relative has not been located, the report shall set forth the efforts made to identify and locate the relative.

Source: Laws 1988, LB 372, § 20; Laws 1997, LB 307, § 56; Laws 2007, LB296, § 104.
Operative date July 1, 2007.

43-146.16 Forms; notarized; filing. The forms provided by sections 43-146.06 and 43-146.08 shall be notarized and filed with the department which shall keep such forms with all other records of the adopted person.

Source: Laws 1988, LB 372, § 21; Laws 1997, LB 307, § 57; Laws 2007, LB296, § 105.
Operative date July 1, 2007.

43-146.17 Heir of adopted person; access to information; when; fee. (1) Notwithstanding sections 43-119 to 43-146.16 and except as otherwise provided in this section, an heir twenty-one years of age or older of an adopted person shall have access to all information on file at the Department of Health and Human Services related to such adopted person, including information contained in the original birth certificate of the adopted person, if: (a)(i) The adopted person is deceased, (ii) both biological parents of the adopted person are deceased or, if only one biological parent is known, such parent is deceased, and (iii) each spouse of the biological parent or parents of the adopted person, if any, is deceased, if such spouse is not a biological parent; or (b) at least one hundred years has passed since the birth of the adopted person.

(2) The following information relating to an adopted person shall not be released to the heir of such person under this section: (a) Tests conducted for the human immunodeficiency virus or acquired immunodeficiency syndrome; (b) the revocation of a license to practice medicine in the State of Nebraska; (c) child protective services reports or records; (d) adult protective services reports or records; (e) information from the central register of child protection cases and the Adult Protective Services Central Registry; or (f) law enforcement investigative reports.

(3) The department shall provide a form that an heir of an adopted person may use to request information under this section. The department may charge a reasonable fee in an amount established by rules and regulations of the department to recover expenses incurred by the

department in carrying out this section. Such fee may be waived if the requesting party shows that the fee would work an undue financial hardship on the party. When any information is provided to an heir of an adopted person under this section, the disclosure of such information shall be recorded in the records of the adopted person, including the nature of the information disclosed, to whom the information was disclosed, and the date of the disclosure.

(4) For purposes of this section, an heir of an adopted person means a direct biological descendent of such adopted person.

(5) The department may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2002, LB 952, § 1; Laws 2005, LB 61, § 1; Laws 2007, LB296, § 106.
Operative date July 1, 2007.

(e) EXCHANGE-OF-INFORMATION CONTRACTS

43-158 Information included; effect on visitation. When the department determines that an adoption involving exchange of information would serve a child's best interests, it may enter into agreements with the child's proposed adoptive parent or parents for the exchange of information. The nature of the information promised to be provided shall be specified in an exchange-of-information contract and may include, but shall not be limited to, letters by the adoptive parent or parents at specified intervals providing information regarding the child's development or photographs of the child at specified intervals. Any agreement shall provide that the biological parent or parents keep the department informed of any change in address or telephone number and may include provision for communication by the biological parent or parents indirectly through the department or directly to the adoptive parent or parents. Nothing in sections 43-155 to 43-160 shall be interpreted to preclude or allow court-ordered parenting time, visitation, or other access with the child and the biological parent or parents.

Source: Laws 1988, LB 301, § 4; Laws 2002, LB 1105, § 437; Laws 2007, LB554, § 39.
Operative date January 1, 2008.

(f) NEBRASKA INDUSTRIAL HOME AT MILFORD RECORDS

43-161 Client records; maintained by Department of Health and Human Services; access. All client records from the Nebraska Industrial Home at Milford shall be maintained by the Department of Health and Human Services as confidential records but shall be accessible as provided by statute or by the rules and regulations of the department.

Source: Laws 1993, LB 205, § 7; Laws 1996, LB 1044, § 123; Laws 2007, LB296, § 107.
Operative date July 1, 2007.

ARTICLE 2

JUVENILE CODE

(g) DISPOSITION

Section.

43-284.02. Ward of the department; appointment of guardian; payments allowed.

(j) SEPARATE JUVENILE COURTS

43-2,113. Rooms and offices; jurisdiction; powers and duties.

43-2,119. Judges; number; presiding judge.

(g) DISPOSITION

43-284.02 Ward of the department; appointment of guardian; payments allowed. The Department of Health and Human Services may make payments as needed on behalf of a child who has been a ward of the department after the appointment of a guardian for the child. Such payments to the guardian may include maintenance costs, medical and surgical expenses, and other costs incidental to the care of the child. All such payments shall terminate on or before the child's nineteenth birthday. The child under guardianship shall be a child for whom the guardianship would not be possible without the financial aid provided under this section.

The Department of Health and Human Services shall adopt and promulgate rules and regulations for the administration of this section.

Source: Laws 1986, LB 600, § 14; Laws 1996, LB 1044, § 132; Laws 2007, LB296, § 108.
Operative date July 1, 2007.

(j) SEPARATE JUVENILE COURTS

43-2,113 Rooms and offices; jurisdiction; powers and duties. (1) In counties where a separate juvenile court is established, the county board of the county shall provide suitable rooms and offices for the accommodation of the judge of the separate juvenile court and the officers and employees appointed by such judge or by the probation administrator pursuant to subsection (4) of section 29-2253. Such separate juvenile court and the judge, officers, and employees of such court shall have the same and exclusive jurisdiction, powers, and duties that are prescribed in the Nebraska Juvenile Code, concurrent jurisdiction under section 83-223, and such other jurisdiction, powers, and duties as specifically provided by law.

(2) A juvenile court created in a separate juvenile court judicial district or a county court sitting as a juvenile court in all other counties shall have and exercise jurisdiction within such juvenile court judicial district or county court judicial district with the county court and district court in all matters arising under Chapter 42, article 3, when the care, support, custody, or control of minor children under the age of eighteen years is involved. Such cases shall be filed in the county court and district court and may, with the consent of the juvenile judge, be transferred to the docket of the separate juvenile court or county court.

(3) All orders issued by a separate juvenile court or a county court which provide for child support or spousal support as defined in section 42-347 shall be governed by sections 42-347 to 42-381 and 43-290 relating to such support. Certified copies of such orders shall be filed by the clerk of the separate juvenile or county court with the clerk of the district court who shall maintain a record as provided in subsection (4) of section 42-364. There shall be no fee charged for the filing of such certified copies.

Source: Laws 1959, c. 189, § 3, p. 684; Laws 1961, c. 205, § 2, p. 618; Laws 1963, c. 527, § 1, p. 1653; R.S.1943, (1978), § 43-230; Laws 1981, LB 499, § 41; Laws 1981, LB 346, § 70; Laws 1984, LB 13, § 78; Laws 1984, LB 973, § 3; Laws 1985, LB 447, § 33; Laws 1985, Second Spec. Sess., LB 7, § 64; Laws 1986, LB 529, § 49; Laws 1986, LB 600, § 11; Laws 1991, LB 830, § 30; Laws 1993, LB 435, § 2; Laws 1994, LB 490, § 2; Laws 1996, LB 1296, § 21; Laws 1997, LB 229, § 35; Laws 2007, LB554, § 40.
Operative date January 1, 2008.

43-2,119 Judges; number; presiding judge. (1) The number of judges of the separate juvenile court in counties which have established a separate juvenile court shall be:

(a) Two judges in counties having seventy-five thousand inhabitants but less than two hundred thousand inhabitants;

(b) Four judges in counties having at least two hundred thousand inhabitants but less than four hundred thousand inhabitants; and

(c) Five judges in counties having four hundred thousand inhabitants or more.

(2) The senior judge in point of service as a juvenile court judge shall be the presiding judge. The judges shall rotate the office of presiding judge every three years unless the judges agree to another system.

Source: Laws 1972, LB 1362, § 1; Laws 1973, LB 446, § 1; Laws 1976, LB 669, § 3; R.S.1943, (1978), § 43-233.01; Laws 1981, LB 346, § 76; Laws 1995, LB 19, § 2; Laws 1998, LB 404, § 3; Laws 2001, LB 23, § 3; Laws 2007, LB377, § 4.
Effective date July 1, 2007.

ARTICLE 4

OFFICE OF JUVENILE SERVICES

Section.

43-404. Office of Juvenile Services; created; powers and duties.

43-407. Office of Juvenile Services; programs and treatment services; treatment plan; case management and coordination process; funding utilization; intent.

43-411. Detainers for apprehension and detention; authorized; detention; limitations.

43-404 Office of Juvenile Services; created; powers and duties. There is created within the Department of Health and Human Services the Office of Juvenile Services. The office shall have oversight and control of state juvenile correctional facilities and programs other than the secure youth confinement facility which is under the control of the Department of Correctional Services. The Administrator of the Office of Juvenile Services shall be appointed by the chief executive officer of the department or his or her designee and shall be

responsible for the administration of the facilities and programs of the office. The department may contract with a state agency or private provider to operate any facilities and programs of the Office of Juvenile Services.

Source: Laws 1994, LB 988, § 10; Laws 1996, LB 1044, § 960; R.S.Supp.,1996, § 83-925.02; Laws 1998, LB 1073, § 36; Laws 2007, LB296, § 109.
Operative date July 1, 2007.

43-407 Office of Juvenile Services; programs and treatment services; treatment plan; case management and coordination process; funding utilization; intent. The Office of Juvenile Services shall design and make available programs and treatment services through the Youth Rehabilitation and Treatment Center-Kearney and Youth Rehabilitation and Treatment Center-Geneva. The programs and treatment services shall be based upon the individual or family evaluation process and treatment plan. The treatment plan shall be developed within fourteen days after admission. If a juvenile placed at the Youth Rehabilitation and Treatment Center-Kearney or Youth Rehabilitation and Treatment Center-Geneva is assessed as needing inpatient or subacute substance abuse or behavioral health residential treatment, the juvenile may be transferred to a program or facility if the treatment and security needs of the juvenile can be met. The assessment process shall include involvement of both private and public sector behavioral health providers. The selection of the treatment venue for each juvenile shall include individualized case planning and incorporate the goals of the juvenile justice system pursuant to section 43-402. Juveniles committed to the Youth Rehabilitation and Treatment Center-Kearney or Youth Rehabilitation and Treatment Center-Geneva who are transferred to alternative settings for treatment remain committed to the Department of Health and Human Services and the Office of Juvenile Services until discharged from such custody. Programs and treatment services shall address:

- (1) Behavioral impairments, severe emotional disturbances, sex offender behaviors, and other mental health or psychiatric disorders;
- (2) Drug and alcohol addiction;
- (3) Health and medical needs;
- (4) Education, special education, and related services;
- (5) Individual, group, and family counseling services as appropriate with any treatment plan related to subdivisions (1) through (4) of this section. Services shall also be made available for juveniles who have been physically or sexually abused;
- (6) A case management and coordination process, designed to assure appropriate reintegration of the juvenile to his or her family, school, and community. This process shall follow individualized planning which shall begin at intake and evaluation. Structured programming shall be scheduled for all juveniles. This programming shall include a strong academic program as well as classes in health education, living skills, vocational training, behavior management and modification, money management, family and parent responsibilities, substance abuse awareness, physical education, job skills training, and job placement assistance. Participation shall be required of all juveniles if such programming is determined to be age and developmentally appropriate. The goal of such structured

programming shall be to provide the academic and life skills necessary for a juvenile to successfully return to his or her home and community upon release; and

(7) The design and delivery of treatment programs through the youth rehabilitation and treatment centers as well as any licensing or certification requirements, and the office shall follow the requirements as stated within Title XIX and Title IV-E of the federal Social Security Act, as such act existed on May 25, 2007, the Special Education Act, or other funding guidelines as appropriate. It is the intent of the Legislature that these funding sources shall be utilized to support service needs of eligible juveniles.

Source: Laws 1994, LB 988, § 14; Laws 1997, LB 882, § 11; R.S.Supp.,1997, § 83-925.06; Laws 1998, LB 1073, § 39; Laws 2007, LB542, § 4.
Effective date May 25, 2007.

43-411 Detainers for apprehension and detention; authorized; detention; limitations. The chief executive officer of the Department of Health and Human Services shall have the authority, and may delegate the authority only to the Administrator of the Office of Juvenile Services and the superintendents of the youth rehabilitation and treatment centers, to issue detainers for the apprehension and detention of juveniles who have absconded from a placement with or commitment to the office. Any peace officer who detains a juvenile on such a detainer shall hold the juvenile in an appropriate facility or program for juveniles until the office can take custody of the juvenile.

Source: Laws 1997, LB 882, § 8; R.S.Supp.,1997, § 83-925.13; Laws 1998, LB 1073, § 43; Laws 1999, LB 522, § 1; Laws 2007, LB296, § 110.
Operative date July 1, 2007.

ARTICLE 5

ASSISTANCE FOR CERTAIN CHILDREN

Section.

- 43-504. Terms, defined; pregnancy; effect.
- 43-504.01. Conditions of eligibility; partially or totally unemployed parent or needy caretaker.
- 43-507. Mentally and physically handicapped children; Department of Health and Human Services; duties.
- 43-508. Department of Health and Human Services; cooperation with state institutions.
- 43-511. Benefits extended to children in rural districts.
- 43-512. Application for assistance; procedure; maximum monthly allowance; payment; transitional benefits; terms, defined.
- 43-512.08. Intervention in matters relating to child, spousal, or medical support; when authorized.
- 43-512.11. Work and education programs; department; report.
- 43-512.15. Title IV-D child support order; modification; when; procedures.
- 43-515. Department of Health and Human Services; investigations; approval or disapproval of application; notice.
- 43-522. State assistance funds; how expended; medical care.

- 43-523. Department of Health and Human Services; reports.
- 43-524. Department of Health and Human Services; duty to cooperate with other welfare agencies.
- 43-525. Child welfare services; state assistance funds; expenditure.
- 43-529. Aid to dependent children; needs of persons with whom child is living; payment; requirements.
- 43-536. Child care reimbursement; market rate survey; adjustment of rate.

43-504 Terms, defined; pregnancy; effect. (1) The term dependent child shall mean a child under the age of nineteen years who is living with a relative or with a caretaker who is the child's legal guardian or conservator in a place of residence maintained by one or more of such relatives or caretakers as his, her, or their own home, or which child has been removed from the home of his or her father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first or second cousin, nephew, or niece as a result of judicial determination to the effect that continuation in the home would be contrary to the safety and welfare of the child and such child has been placed in a foster family home or child care institution as a result of such determination, when the state or any court having jurisdiction of such child is responsible for the care and placement of such child and one of the following conditions exists: (a) Such child received aid from the state in or for the month in which court proceedings leading to such determination were initiated; (b) such child would have received assistance in or for such month if application had been made therefor; or (c) such child had been living with such a relative specified in this subsection at any time within six months prior to the month in which such proceedings were initiated and would have received such aid in or for the month that such proceedings were initiated if in such month the child had been living with, and removed from the home of, such a relative and application had been made therefor.

(2) In awarding aid to dependent children payments, the term dependent child shall include an unborn child but only during the last three months of pregnancy. A pregnant woman may be eligible but only (a) if it has been medically verified that the child is expected to be born in the month such payments are made or expected to be born within the three-month period following such month of payment and (b) if such child had been born and was living with her in the month of payment, she would be eligible for aid to families with dependent children. As soon as it is medically determined that pregnancy exists, a pregnant woman who meets the other requirements for aid to dependent children shall be eligible for medical assistance.

(3) A physically or medically handicapped child shall mean a child who, by reason of a physical defect or infirmity, whether congenital or acquired by accident, injury, or disease, is or may be expected to be totally or partially incapacitated for education or for remunerative occupation.

Source: Laws 1935, Spec. Sess., c. 30, § 4, p. 181; C.S.Supp.,1941, § 43-504; R.S.1943, § 43-504; Laws 1947, c. 157, § 1, p. 433; Laws 1959, c. 190, § 1, p. 692; Laws 1963, c. 254, § 1, p. 773; Laws 1965, c. 241, § 1, p. 687; Laws 1965, c. 242, § 1, p. 689; Laws 1967, c. 409, § 1, p. 1272; Laws 1969, c. 343, § 1, p. 1205; Laws 1969, c. 344, § 1, p. 1209; Laws 1973, LB 159, § 1; Laws 1975, LB 397, § 1; Laws 1981, Spec. Sess., LB 7, § 1; Laws 1988, LB 790, § 26; Laws 1992, Third Spec. Sess., LB 20, § 1; Laws 1995, LB 455, § 1; Laws 1997, LB 864, § 2; Laws 1998, LB 1041, § 32; Laws 2007, LB351, § 1.
Effective date September 1, 2007.

43-504.01 Conditions of eligibility; partially or totally unemployed parent or needy caretaker. As a condition of eligibility for aid for children included in section 43-504, a partially or totally unemployed parent or needy caretaker shall participate in the employment preparation or training program for aid to dependent children, unless considered exempt under rules and regulations adopted and promulgated by the Department of Health and Human Services, and any totally or partially unemployed parent or needy caretaker who fails or refuses without good cause to participate in the employment preparation or training program or who refuses without good cause to accept employment in which he or she is able to engage which will increase his or her ability to maintain himself or herself and his or her family shall be deemed by such refusal to have rendered his or her children ineligible for further aid until he or she has complied with this section.

The requirements of this section shall also apply to any dependent child unless he or she is under age sixteen or attending, full time, an elementary, secondary, or vocational school.

Source: Laws 1965, c. 242, § 2, p. 692; Laws 1981, Spec. Sess., LB 7, § 2; Laws 1996, LB 1044, § 152; Laws 1997, LB 864, § 3; Laws 2007, LB296, § 111.
Operative date July 1, 2007.

43-507 Mentally and physically handicapped children; Department of Health and Human Services; duties. The Department of Health and Human Services, on behalf of mentally and physically handicapped children, shall (1) obtain admission to state and other suitable schools, hospitals, or other institutions or care in their own homes or in family, free, or boarding homes for such children in accordance with the provisions of the existing law, (2) maintain medical supervision over such mentally or physically handicapped children, and (3) provide necessary medical or surgical care in a suitable hospital, sanitarium, preventorium, or other institution or in the child's own home or a home for any medically handicapped child needing such care and pay for such care from public funds, if necessary.

Source: Laws 1935, Spec. Sess., c. 30, § 7, p. 184; C.S.Supp.,1941, § 43-507; R.S.1943, § 43-507; Laws 1965, c. 243, § 1, p. 693; Laws 1967, c. 251, § 2, p. 662; Laws 1988, LB 790, § 27; Laws 1996, LB 1044, § 153; Laws 2007, LB296, § 112.
Operative date July 1, 2007.

43-508 Department of Health and Human Services; cooperation with state institutions. The Department of Health and Human Services shall cooperate with the state institutions for delinquent and mentally and physically handicapped children to ascertain the conditions of the home and the character and habits of the parents of a child, before his or

her discharge from a state institution, and make recommendations as to the advisability of returning the child to his or her home. In case the department deems it unwise to have any such child returned to his or her former home, such state institution may, with the consent of the department, place such child into the care of the department.

Source: Laws 1935, Spec. Sess., c. 30, § 8, p. 184; C.S.Supp.,1941, § 43-508; R.S.1943, § 43-508; Laws 1989, LB 22, § 4; Laws 1996, LB 1044, § 154; Laws 2007, LB296, § 113.
Operative date July 1, 2007.

43-511 Benefits extended to children in rural districts. The Department of Health and Human Services shall extend the assistance and services herein provided for to all children in rural districts throughout this state, in order that the same benefits and facilities shall be available to children in such districts as in urban areas.

Source: Laws 1935, Spec. Sess., c. 30, § 11, p. 184; C.S.Supp.,1941, § 43-511; R.S.1943, § 43-511; Laws 1982, LB 522, § 12; Laws 1996, LB 1044, § 155; Laws 2007, LB296, § 114.
Operative date July 1, 2007.

43-512 Application for assistance; procedure; maximum monthly allowance; payment; transitional benefits; terms, defined. (1) Any dependent child as defined in section 43-504 or any relative or eligible caretaker of such a dependent child may file with the Department of Health and Human Services a written application for financial assistance for such child on forms furnished by the department.

(2) The department, through its agents and employees, shall make such investigation pursuant to the application as it deems necessary or as may be required by the county attorney or authorized attorney. If the investigation or the application for financial assistance discloses that such child has a parent or stepparent who is able to contribute to the support of such child and has failed to do so, a copy of the finding of such investigation and a copy of the application shall immediately be filed with the county attorney or authorized attorney.

(3) The department shall make a finding as to whether the application referred to in subsection (1) of this section should be allowed or denied. If the department finds that the application should be allowed, the department shall further find the amount of monthly assistance which should be paid with reference to such dependent child. Except as may be otherwise provided, payments shall be made by state warrant, and the amount of payments shall not exceed three hundred dollars per month when there is but one dependent child and one eligible caretaker in any home, plus an additional seventy-five dollars per month on behalf of each additional eligible person. No payments shall be made for amounts totaling less than ten dollars per month except in the recovery of overpayments.

(4) The amount which shall be paid as assistance with respect to a dependent child shall be based in each case upon the conditions disclosed by the investigation made by the department. An appeal shall lie from the finding made in each case to the chief executive officer of the department or his or her designated representative. Such appeal may be taken by any taxpayer or by any relative of such child. Proceedings for and upon appeal shall be conducted in the same manner as provided for in section 68-1016.

(5)(a) For the purpose of preventing dependency, the department shall adopt and promulgate rules and regulations providing for services to former and potential recipients of aid to dependent children and medical assistance benefits. The department shall adopt and promulgate rules and regulations establishing programs and cooperating with programs of work incentive, work experience, job training, and education. The provisions of this section with regard to determination of need, amount of payment, maximum payment, and method of payment shall not be applicable to families or children included in such programs.

(b) If a recipient of aid to dependent children becomes ineligible for aid to dependent children as a result of increased hours of employment or increased income from employment after having participated in any of the programs established pursuant to subdivision (a) of this subsection, the recipient may be eligible for the following benefits, as provided in rules and regulations of the department in accordance with sections 402, 417, and 1925 of the federal Social Security Act, as amended, Public Law 100-485, in order to help the family during the transition from public assistance to independence:

(i) An ongoing transitional payment that is intended to meet the family's ongoing basic needs which may include food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses during the five months following the time the family becomes ineligible for assistance under the aid to dependent children program, if the family's earned income is at or below one hundred eighty-five percent of the federal poverty level at the time the family becomes ineligible for the aid to dependent children program. Payments shall be made in five monthly payments, each equal to one-fifth of the aid to dependent children payment standard for the family's size at the time the family becomes ineligible for the aid to dependent children program. If during the five-month period, (A) the family's earnings exceed one hundred eighty-five percent of the federal poverty level, (B) the family members are no longer working, (C) the family ceases to be Nebraska residents, (D) there is no longer a minor child in the family's household, or (E) the family again becomes eligible for the aid to dependent children program, the family shall become ineligible for any remaining transitional benefits under this subdivision;

(ii) Child care as provided in subdivision (1)(c) of section 68-1724; and

(iii) Except as may be provided in accordance with subsection (2) of section 68-1713 and subdivision (1)(c) of section 68-1724, medical assistance for up to twelve months after the month the recipient becomes employed and is no longer eligible for aid to dependent children.

(6) For purposes of sections 43-512 to 43-512.10 and 43-512.12 to 43-512.18:

(a) Authorized attorney shall mean an attorney, employed by the county subject to the approval of the county board, employed by the department, or appointed by the court, who is authorized to investigate and prosecute child, spousal, and medical support cases. An authorized attorney shall represent the state as provided in section 43-512.03;

(b) Child support shall be defined as provided in section 43-1705;

(c) Medical support shall include all expenses associated with the birth of a child and, if required pursuant to section 42-369 or 43-290, medical and hospital insurance coverage or membership in a health maintenance organization or preferred provider organization;

(d) Spousal support shall be defined as provided in section 43-1715;

(e) State Disbursement Unit shall be defined as provided in section 43-3341; and

(f) Support shall be defined as provided in section 43-3313.

Source: Laws 1935, Spec. Sess., c. 30, § 12, p. 185; C.S.Supp., 1941, § 43-512; R.S. 1943, § 43-512; Laws 1945, c. 104, § 1, p. 338; Laws 1947, c. 158, § 1, p. 436; Laws 1951, c. 130, § 1, p. 549; Laws 1951, c. 79, § 5, p. 240; Laws 1953, c. 233, § 1, p. 809; Laws 1959, c. 191, § 1, p. 694; Laws 1967, c. 252, § 1, p. 671; Laws 1971, LB 639, § 1; Laws 1974, LB 834, § 1; Laws 1975, LB 192, § 1; Laws 1977, LB 179, § 1; Laws 1977, LB 425, § 1; Laws 1980, LB 789, § 1; Laws 1982, LB 942, § 3; Laws 1982, LB 522, § 13; Laws 1983, LB 371, § 12; Laws 1985, Second Spec. Sess., LB 7, § 65; Laws 1987, LB 573, § 2; Laws 1988, LB 518, § 1; Laws 1989, LB 362, § 3; Laws 1990, LB 536, § 1; Laws 1991, LB 457, § 5; Laws 1991, LB 715, § 7; Laws 1994, LB 1224, § 50; Laws 1995, LB 455, § 2; Laws 1996, LB 1044, § 156; Laws 1997, LB 864, § 4; Laws 2000, LB 972, § 17; Laws 2007, LB 296, § 115; Laws 2007, LB 351, § 2.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 115, with LB 351, section 2, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 351 became effective September 1, 2007.

43-512.08 Intervention in matters relating to child, spousal, or medical support; when authorized. The county attorney or authorized attorney, acting for or on behalf of the State of Nebraska, may intervene without leave of the court in any proceeding for dissolution of marriage, paternity, separate maintenance, or child, spousal, or medical support for the purpose of securing an order for child, spousal, or medical support, modifying an order for child or medical support, or modifying an order for child support as the result of a review of such order under sections 43-512.12 to 43-512.18. Such proceedings shall be limited only to the determination of child or medical support. Except in cases in which the intervention is the result of a review under such sections, the county attorney or authorized attorney shall so act only when it appears that the children are not otherwise represented by counsel.

Source: Laws 1976, LB 926, § 10; Laws 1985, Second Spec. Sess., LB 7, § 72; Laws 1991, LB 457, § 12; Laws 1991, LB 715, § 11; Laws 1994, LB 1224, § 54; Laws 2007, LB 554, § 41.
Operative date January 1, 2008.

43-512.11 Work and education programs; department; report. The Department of Health and Human Services shall report annually, not later than February 1 of each year, to the Legislature regarding the effectiveness of programs established pursuant to subdivision (5)(a) of section 43-512. The report shall include, but not be limited to:

- (1) The number of program participants;
- (2) The number of program participants who become employed, whether such employment is full time or part time or subsidized or unsubsidized, and whether the employment was retained for at least thirty days;
- (3) Supportive services provided to participants in the program;
- (4) Grant reductions realized; and

(5) A cost and benefit statement for the program.

Source: Laws 1988, LB 518, § 2; Laws 1996, LB 1044, § 162; Laws 2007, LB296, § 116.
Operative date July 1, 2007.

43-512.15 Title IV-D child support order; modification; when; procedures. (1)

The county attorney or authorized attorney, upon referral from the Department of Health and Human Services, shall file a complaint to modify a child support order unless the attorney determines in the exercise of independent professional judgment that:

(a) The variation from the Supreme Court child support guidelines pursuant to section 42-364.16 is based on material misrepresentation of fact concerning any financial information submitted to the attorney;

(b) The variation from the guidelines is due to a voluntary reduction in net monthly income. For purposes of this section, a person who has been incarcerated for a period of one year or more in a county or city jail or a federal or state correctional facility shall be considered to have an involuntary reduction of income unless (i) the incarceration is a result of a conviction for criminal nonsupport pursuant to section 28-706 or a conviction for a violation of any federal law or law of another state substantially similar to section 28-706 or (ii) the incarcerated individual has a documented record of willfully failing or neglecting to provide proper support which he or she knew or reasonably should have known he or she was legally obligated to provide when he or she had sufficient resources to provide such support; or

(c) When the amount of the order is considered with all the other undisputed facts in the case, no variation from the criteria set forth in subdivisions (1) and (2) of section 43-512.12 exists.

(2) The proceedings to modify a child support order shall comply with section 42-364, and the county attorney or authorized attorney shall represent the state in the proceedings.

(3) After a complaint to modify a child support order is filed, any party may choose to be represented personally by private counsel. Any party who retains private counsel shall so notify the county attorney or authorized attorney in writing.

Source: Laws 1991, LB 715, § 16; Laws 1993, LB 523, § 10; Laws 1996, LB 1044, § 166; Laws 1997, LB 307, § 67; Laws 2004, LB 1207, § 39; Laws 2007, LB554, § 42.
Operative date July 1, 2008.

43-515 Department of Health and Human Services; investigations; approval or disapproval of application; notice. In each case the Department of Health and Human Services shall make such investigation and reinvestigations as may be necessary to determine family circumstances and eligibility for assistance payments. Each applicant and recipient shall be notified in writing as to the approval or disapproval of any application, as to the amount of payments awarded, as to any change in the amount of payments awarded, and as to the discontinuance of payments.

Source: Laws 1935, Spec. Sess., c. 30, § 5, p. 186; Laws 1939, c. 114, § 2, p. 491; C.S.Supp.,1941, § 43-515; R.S.1943, § 43-515; Laws 1967, c. 253, § 1, p. 673; Laws 1977, LB 312, § 1; Laws 1982, LB 522, § 16; Laws 1996, LB 1044, § 168; Laws 2007, LB296, § 117.
Operative date July 1, 2007.

43-522 State assistance funds; how expended; medical care. The Department of Health and Human Services shall expend state assistance funds allocated for medically handicapped children to supplement other state, county, and municipal, benevolent, fraternal, and charitable expenditures, to extend and improve, especially in rural areas and in areas suffering from severe economic distress, services for locating physically and medically handicapped children and for providing medical, surgical, correction, and other services and care, and facilities for diagnosis, hospitalization, and aftercare, for children who are physically or medically handicapped or who are suffering from conditions which lead to medical handicaps. Expenditures and services shall be uniformly distributed so far as possible or practicable under conditions and circumstances which may be found to exist.

Source: Laws 1935, Spec. Sess., c. 30, § 22, p. 188; C.S.Supp.,1941, § 43-522; R.S.1943, § 43-522; Laws 1988, LB 790, § 28; Laws 1996, LB 1044, § 169; Laws 2006, LB 994, § 54; Laws 2007, LB296, § 118.
Operative date July 1, 2007.

43-523 Department of Health and Human Services; reports. The Department of Health and Human Services shall make such reports to the Department of Health and Human Services of the United States in such form and containing such information as such department may from time to time require, and the department shall comply with such provisions as necessary to assure the correctness of such reports.

Source: Laws 1935, Spec. Sess., c. 30, § 23, p. 188; C.S.Supp.,1941, § 43-523; R.S.1943, § 43-523; Laws 1961, c. 204, § 2, p. 612; Laws 1961, c. 415, § 4, p. 1246; Laws 1996, LB 1044, § 170; Laws 2007, LB296, § 119.
Operative date July 1, 2007.

43-524 Department of Health and Human Services; duty to cooperate with other welfare agencies. The Department of Health and Human Services shall cooperate with medical, health, nursing, and welfare groups and organizations and with any agency in the state charged with providing for local rehabilitation of physically handicapped children.

Source: Laws 1935, Spec. Sess., c. 30, § 24, p. 188; C.S.Supp.,1941, § 43-524; R.S.1943, § 43-524; Laws 1996, LB 1044, § 171; Laws 2006, LB 994, § 55; Laws 2007, LB296, § 120.
Operative date July 1, 2007.

43-525 Child welfare services; state assistance funds; expenditure. The Department of Health and Human Services shall expend state assistance funds allocated for child welfare services in establishing, extending, and strengthening, especially in rural areas, child welfare services mentioned in sections 43-501 to 43-526, for which other funds are not specifically or sufficiently made available by such sections or other laws of this state.

Source: Laws 1935, Spec. Sess., c. 30, § 25, p. 189; C.S.Supp.,1941, § 43-525; R.S.1943, § 43-525; Laws 1982, LB 522, § 17; Laws 1996, LB 1044, § 172; Laws 2007, LB296, § 121.
Operative date July 1, 2007.

43-529 Aid to dependent children; needs of persons with whom child is living; payment; requirements. (1) Payments with respect to any dependent child, including payments to meet the needs of the relative with whom such child is living, such relative's spouse, and the needs of any other individual living in the same home as such child and relative if such needs are taken into account in making the determination for eligibility of such child to receive aid to families with dependent children, may be made on behalf of such child, relative, and other person to either (a) another individual who, in accordance with standards set by the Department of Health and Human Services, is interested in or concerned with the welfare of such child or relative, or (b) directly to a person or entity furnishing food, living accommodations, or other goods, services, or items to or for such child, relative, or other person, or (c) both such individual and such person or entity.

(2) No such payments shall be made unless all of the following conditions are met: (a) The department has determined that the relative of such child with respect to whom such payments are made has such inability to manage funds that making payments to him or her would be contrary to the welfare of the child and that it is therefor necessary to provide such aid with respect to such child and relative through payments described above to another interested individual, (b) the department has made arrangements for undertaking and continuing special efforts to develop greater ability on the part of the relative to manage funds in such a manner as to protect the welfare of the family, and (c) the department has approved a plan that provides for a periodic review to ascertain whether conditions justifying such payments still exist, with provision for termination of such payments if such conditions no longer exist and for judicial appointment of a guardian or conservator if it appears that the need for such special payments is continuing or is likely to continue beyond a period specified by the department.

Source: Laws 1969, c. 553, § 1, p. 2242; Laws 1982, LB 522, § 18; Laws 1996, LB 1044, § 173; Laws 2007, LB296, § 122.
Operative date July 1, 2007.

43-536 Child care reimbursement; market rate survey; adjustment of rate. In determining the rate of reimbursement for child care, the Department of Health and Human Services shall conduct a market rate survey of the child care providers in the state. The department shall adjust the reimbursement rate for child care every odd-numbered year at a rate not less than the sixtieth percentile and not to exceed the seventy-fifth percentile of the current market rate survey, except that (1) nationally accredited child care providers may be reimbursed at higher rates and (2) for the two fiscal years beginning July 1, 2003, such rate may be less than the sixtieth percentile but shall not be less than the rate for the immediately preceding fiscal year.

Source: Laws 1995, LB 455, § 20; Laws 1996, LB 1044, § 174; Laws 1997, LB 307, § 69; Laws 1998, LB 1073, § 28; Laws 2003, LB 414, § 1; Laws 2007, LB296, § 123.
Operative date July 1, 2007.

ARTICLE 9

CHILDREN COMMITTED TO THE DEPARTMENT

Section.

43-905. Guardianship; care; placement; contracts; payment for maintenance.

43-906. Adoption; consent.

43-907. Assets; custody; records; expenditures; investments.

43-908. Child reaching age of majority; disposition of assets.

43-905 Guardianship; care; placement; contracts; payment for maintenance. (1)

The Department of Health and Human Services shall be the legal guardian of all children committed to it. The department shall afford temporary care and shall use special diligence to provide suitable homes for such children. The department is authorized to place such children in suitable families for adoption or, in the discretion of the department, on a written contract.

(2) The contract shall provide (a) for the children's education in the public schools or otherwise, (b) for teaching them some useful occupation, and (c) for kind and proper treatment as members of the family in which they are placed.

(3) Whenever any child who has been committed to the department becomes self-supporting, the department shall declare that fact and the guardianship of the department shall cease. Thereafter the child shall be entitled to his or her own earnings. Guardianship of and services by the department shall never extend beyond the age of majority, except that services by the department to a child shall continue until the child reaches the age of twenty-one if the child is a student regularly attending a school, college, or university or regularly attending a course of vocational or technical training designed to prepare such child for gainful employment.

(4) Whenever the parents of any ward, whose parental rights have not been terminated, have become able to support and educate their child, the department shall restore the child to his or her parents if the home of such parents would be a suitable home. The guardianship of the department shall then cease.

(5) Whenever permanent free homes for the children cannot be obtained, the department shall have the authority to provide and pay for the maintenance of the children in private families, boarding homes, or institutions for care of children.

Source: Laws 1911, c. 62, § 5, p. 274; R.S.1913, § 7229; C.S.1922, § 6886; C.S.1929, § 83-504; Laws 1937, c. 202, § 1, p. 826; C.S.Supp.,1941, § 83-504; R.S.1943, § 83-243; Laws 1945, c. 246, § 1, p. 779; Laws 1951, c. 325, § 1, p. 1097; Laws 1953, c. 344, § 1, p. 1118; Laws 1957, c. 387, § 1, p. 1345; Laws 1959, c. 443, § 1, p. 1491; Laws 1961, c. 415, § 32, p. 1261; Laws 1965, c. 245, § 1, p. 695; Laws 1967, c. 248, § 4, p. 657; Laws 1969, c. 349, § 1, p. 1219; Laws 1977, LB 312, § 5; Laws 1978, LB 732, § 1; Laws 1992, LB 169, § 1; Laws 1996, LB 1044, § 185; Laws 1996, LB 1155, § 10; Laws 1998, LB 1073, § 29; Laws 2007, LB296, § 124.
Operative date July 1, 2007.

Cross Reference

Foster Parent Liability and Property Damage Fund, see section 43-1320.

43-906 Adoption; consent. Except as otherwise provided in the Nebraska Indian Child Welfare Act, the Department of Health and Human Services, or its duly authorized agent, may consent to the adoption of children committed to it upon the order of a juvenile court if the parental rights of the parents or of the mother of a child born out of wedlock have been terminated and if no father of a child born out of wedlock has timely asserted his paternity rights under section 43-104.02, or upon the relinquishment to such department by their parents or the mother and, if required under sections 43-104.08 to 43-104.25, the father of a child born out of wedlock. The parental rights of parents of a child born out of wedlock shall be determined pursuant to sections 43-104.05 and 43-104.08 to 43-104.25.

Source: Laws 1911, c. 62, § 7, p. 275; R.S.1913, § 7231; C.S.1922, § 6888; C.S.1929, § 83-506; R.S.1943, § 83-245; Laws 1947, c. 333, § 2, p. 1052; Laws 1955, c. 344, § 2, p. 1061; Laws 1967, c. 248, § 5, p. 658; Laws 1985, LB 255, § 36; Laws 1995, LB 712, § 27; Laws 1996, LB 1044, § 186; Laws 2007, LB247, § 21.
Operative date June 1, 2007.

Cross Reference

Adoption, substitute consents, see sections 43-105 and 43-293.
Nebraska Indian Child Welfare Act, see section 43-1501.

43-907 Assets; custody; records; expenditures; investments. Unless a guardian shall have been appointed by a court of competent jurisdiction, the Department of Health and Human Services shall take custody of and exercise general control over assets owned by children under the charge of the department. Children owning assets shall at all times pay for personal items. Assets over and above a maximum of one thousand dollars and current income shall be available for reimbursement to the state for the cost of care. Assets may be deposited in a checking account, invested in United States bonds, or deposited in a savings account insured by the United States Government. All income received from the investment or deposit of assets shall be credited to the individual child whose assets were invested or deposited. The department shall make and maintain detailed records showing all receipts, investments, and expenditures of assets owned by children under the charge of the department.

Source: Laws 1963, c. 245, § 1, p. 739; Laws 1976, LB 545, § 1; Laws 1977, LB 312, § 6; Laws 1982, LB 828, § 1; Laws 1996, LB 1044, § 187; Laws 2007, LB296, § 125.
Operative date July 1, 2007.

43-908 Child reaching age of majority; disposition of assets. An attempt shall be made by the Department of Health and Human Services to locate children who arrive at the age of majority for the purpose of delivering and transferring to any such child such funds or property as he or she may own. In the event that such child cannot be located within five years after the child arrives at the age of majority, any funds or assets owned by him or her shall be transferred to the state treasury of the State of Nebraska.

Source: Laws 1963, c. 245, § 2, p. 740; Laws 1977, LB 312, § 7; Laws 1996, LB 1044, § 188; Laws 2007, LB296, § 126.
Operative date July 1, 2007.

ARTICLE 12

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

Section.

43-1230. International application of act.

43-1230 International application of act. (a) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying sections 43-1226 to 43-1247.

(b) Except as otherwise provided in subsection (c) or (d) of this section, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of the Uniform Child Custody Jurisdiction and Enforcement Act shall be recognized and enforced under sections 43-1248 to 43-1264.

(c) A court of this state need not apply the act if the child custody law of a foreign country violates fundamental principles of human rights.

(d) A court of this state need not recognize and enforce an otherwise valid child custody determination of a foreign court under the act if it determines (1) that the child is a habitual resident of Nebraska as defined under the provisions of the Hague Convention on the Civil Aspects of International Child Abduction, as implemented by the International Child Abduction Remedies Act, 42 U.S.C. 11601 et seq., and (2) that the child would be at significant and demonstrable risk of child abuse or neglect as defined in section 28-710 if the foreign child custody determination is recognized and enforced. Such a determination shall create a rebuttable presumption against recognition and enforcement of the foreign child custody determination and, thereafter, a court of this state may exercise child custody jurisdiction pursuant to subdivision (a)(1) of section 43-1238.

(e) The changes made to this section by Laws 2007, LB 341, shall be deemed remedial and shall apply to all cases pending on or before February 2, 2007, and to all cases initiated subsequent thereto.

Source: Laws 2003, LB 148, § 5; Laws 2007, LB341, § 13.
Effective date February 2, 2007.

ARTICLE 13

FOSTER CARE

(a) FOSTER CARE REVIEW ACT

Section.

43-1302. State Foster Care Review Board; established; members; terms; expenses.

43-1314.02. Caregiver information form; development; provided to caregiver.

43-1318. Act, how cited.

(b) STATE FINANCIAL SUPPORT

43-1320. Foster parents; liability protection; Foster Parent Liability and Property Damage Fund; created; use; investment; unreimbursed liability and damage; claim.

(a) FOSTER CARE REVIEW ACT

43-1302 State Foster Care Review Board; established; members; terms; expenses. (1)(a) Until January 1, 2006, the State Foster Care Review Board shall be comprised of nine members to be appointed by the Governor, subject to confirmation by a majority of the members elected to the Legislature. At least one member shall be an attorney with legal expertise in child welfare. Two members shall be from each of the three congressional districts as they existed on January 1, 1982. In addition to the six members representative of the congressional districts, three members shall be appointed by the Governor from a group consisting of all the chairpersons of the local boards, and one such chairperson shall be appointed from each such congressional district. The appointment of a member of a local board to the state board shall not create a vacancy on the local board. Members other than those appointed from the group consisting of all the chairpersons of the local boards shall be appointed to three-year terms, and those members appointed from the group consisting of all the chairpersons of local boards shall be appointed to two-year terms. No person shall serve on the state board for more than six consecutive years. No person employed by a child-caring agency, a child-placing agency, or a court shall be appointed to the state board.

(b) On and after January 1, 2006, the State Foster Care Review Board shall be comprised of eleven members appointed by the Governor with the approval of a majority of the members elected to the Legislature, consisting of: Three members of local foster care review boards, one from each congressional district; one practitioner of pediatric medicine, licensed under the Uniform Credentialing Act; one practitioner of child clinical psychology, licensed under the Uniform Credentialing Act; one social worker certified under the Uniform Credentialing Act, with expertise in the area of child welfare; one attorney who is or has been a guardian ad litem; one representative of a statewide child advocacy group; one director of a child advocacy center; one director of a court appointed special advocate program; and one member of the public who has a background in business or finance.

The terms of members appointed pursuant to this subdivision shall be three years, except that of the initial members of the state board, one-third shall be appointed for terms of one year, one-third for terms of two years, and one-third for terms of three years, as determined by the Governor. No person appointed by the Governor to the state board shall serve more than two consecutive three-year terms. An appointee to a vacancy occurring from an unexpired term shall serve out the term of his or her predecessor. Members whose terms have expired shall continue to serve until their successors have been appointed and qualified. Members

serving on the state board on December 31, 2005, shall continue in office until the members appointed under this subdivision take office. The members of the state board shall, to the extent possible, represent the three congressional districts equally.

(2) The state board shall select a chairperson, vice-chairperson, and such other officers as the state board deems necessary. Members of the state board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The state board shall employ or contract for services from such persons as are necessary to aid it in carrying out its duties.

Source: Laws 1982, LB 714, § 2; Laws 1987, LB 239, § 2; Laws 1990, LB 1222, § 5; Laws 2005, LB 761, § 1; Laws 2007, LB463, § 1133.
Operative date December 1, 2008.

Cross Reference

Uniform Credentialing Act, see section 38-101.

43-1314.02 Caregiver information form; development; provided to caregiver. (1)

The court shall provide a caregiver information form to the foster parent, preadoptive parent, guardian, or relative providing care for the child when giving notice of a court review described in section 43-1314. The form is to be dated and signed by the caregiver and shall, at a minimum, request the following:

- (a) The child's name, age, and date of birth;
- (b) The name of the caregiver, his or her telephone number and address, and whether the caregiver is a foster parent, preadoptive parent, guardian, or relative;
- (c) How long the child has been in the caregiver's care;
- (d) A current picture of the child;
- (e) The current status of the child's medical, dental, and general physical condition;
- (f) The current status of the child's emotional condition;
- (g) The current status of the child's education;
- (h) Whether or not the child is a special education student and the date of the last individualized educational plan;
- (i) A brief description of the child's social skills and peer relationships;
- (j) A brief description of the child's special interests and activities;
- (k) A brief description of the child's reactions before, during, and after visits;
- (l) Whether or not the child is receiving all necessary services;
- (m) The date and place of each visit by the caseworker with the child;
- (n) A description of the method by which the guardian ad litem has acquired information about the child; and
- (o) Whether or not the caregiver can make a permanent commitment to the child if the child does not return home.

(2) A caregiver information form shall be developed by the Supreme Court. Such form shall be made a part of the record in each court that reviews the child's foster care proceedings.

Source: Laws 2007, LB457, § 1.
Effective date September 1, 2007.

43-1318 Act, how cited. Sections 43-1301 to 43-1318 shall be known and may be cited as the Foster Care Review Act.

Source: Laws 1982, LB 714, § 18; Laws 1996, LB 642, § 2; Laws 1998, LB 1041, § 44; Laws 2007, LB457, § 2.
Effective date September 1, 2007.

(b) STATE FINANCIAL SUPPORT

43-1320 Foster parents; liability protection; Foster Parent Liability and Property Damage Fund; created; use; investment; unreimbursed liability and damage; claim. (1) The Legislature finds and declares that foster parents are a valuable resource providing an important service to the citizens of Nebraska. The Legislature recognizes that the current insurance crisis has adversely affected some foster parents in several ways. Foster parents have been unable to obtain liability insurance coverage over and above homeowner's or tenant's coverage for actions filed against them by the foster child, the child's parents, or the child's legal guardian. In addition, the monthly payment made to foster parents is not sufficient to cover the cost of obtaining extended coverage and there is no mechanism in place by which foster parents can recapture the cost. Foster parents' personal resources are at risk, and therefor the Legislature desires to provide relief to address these problems.

(2) The Department of Health and Human Services shall provide for self-insuring the foster parent program pursuant to section 81-8,239.01 or shall provide and pay for liability and property damage insurance for participants in a family foster parent program who have been licensed or approved to provide care or who have been licensed or approved by a legally established Indian tribal council operating within the state to provide care.

(3) There is hereby created the Foster Parent Liability and Property Damage Fund. The fund shall be administered by the Department of Health and Human Services and shall be used to provide funding for self-insuring the foster parent program pursuant to section 81-8,239.01 or to purchase any liability and property damage insurance policy provided pursuant to subsection (2) of this section and reimburse foster parents for unreimbursed liability and property damage incurred or caused by a foster child as the result of acts covered by the insurance policy. Claims for unreimbursed liability and property damage incurred or caused by a foster child may be submitted in the manner provided in the State Miscellaneous Claims Act. Each claim shall be limited to the amount of any deductible applicable to the insurance policy provided pursuant to subsection (2) of this section, and there may be a fifty-dollar deductible payable by the foster parent per claim. The department shall adopt and promulgate rules and regulations to carry out this section. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1992, LB 169, § 2; Laws 1994, LB 1066, § 27; Laws 1996, LB 1044, § 200; Laws 1998, LB 1073, § 30; Laws 2007, LB296, § 127.
Operative date July 1, 2007.

Cross Reference

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.
State Miscellaneous Claims Act, see section 81-8,294.

ARTICLE 14

PARENTAL SUPPORT AND PATERNITY

Section.

- 43-1407. Expenses of mother; liability of father; enforcement; payment by medical assistance program; recovery; procedure.
- 43-1408.01. Notarized acknowledgment of paternity; execution by alleged father; form; filing with Department of Health and Human Services; payment.
- 43-1411. Paternity; action to establish; venue; limitation; summons.
- 43-1414. Genetic testing; procedure; confidentiality; violation; penalty.

43-1407 Expenses of mother; liability of father; enforcement; payment by medical assistance program; recovery; procedure. (1) The father of a child shall also be liable for the reasonable expenses of (a) the child that are associated with the birth of the child and (b) the mother of such child during the period of her pregnancy, confinement, and recovery. Such liability shall be determined and enforced in the same manner as the liability of the father for the support of the child.

(2) In cases in which any medical expenses associated with the birth of the child and the mother of such child during the period of her pregnancy, confinement, and recovery are paid by the medical assistance program, the county attorney or authorized attorney, as defined in section 43-1704, may petition the court for a judgment for all or a portion of the reasonable medical expenses paid by the medical assistance program. Any medical expenses associated with the birth of such child and the mother of such child during the period of her pregnancy, confinement, and recovery that are approved and paid by the medical assistance program shall be presumed to be medically reasonable. If the father challenges any such expenses as not medically reasonable, he has the burden of proving that such expenses were not medically reasonable.

(3) A civil proceeding to recover medical expenses pursuant to this section may be instituted within four years after the child's birth. Summons shall issue and be served as in other civil proceedings, except that such summons may be directed to the sheriff of any county in the state and may be served in any county.

Source: Laws 1941, c. 81, § 7, p. 324; C.S.Supp.,1941, § 43-707; R.S.1943, (1983), § 13-107; Laws 2007, LB554, § 43.
 Operative date January 1, 2008.

43-1408.01 Notarized acknowledgment of paternity; execution by alleged father; form; filing with Department of Health and Human Services; payment. (1) During the period immediately before or after the in-hospital birth of a child whose mother was not married at the time of either conception or birth of the child or at any time between

conception and birth of the child, the person in charge of such hospital or his or her designated representative shall provide to the child's mother and alleged father, if the alleged father is readily identifiable and available, the documents and written instructions for such mother and father to complete a notarized acknowledgment of paternity. Such acknowledgment, if signed by both parties and notarized, shall be filed with the Department of Health and Human Services at the same time at which the certificate of live birth is filed.

Nothing in this section shall be deemed to require the person in charge of such hospital or his or her designee to seek out or otherwise locate an alleged father who is not readily identifiable or available.

(2) The acknowledgment shall be executed on a form prepared by the department. Such form shall be in essentially the same form provided by the department and used for obtaining signatures required by section 71-640.02. The acknowledgment shall include, but not be limited to, (a) a statement by the mother consenting to the acknowledgment of paternity and a statement that the alleged father is the biological father of the child, (b) a statement by the alleged father that he is the biological father of the child, (c) written information regarding parental rights and responsibilities, and (d) the social security numbers of the parents.

(3) The form provided for in subsection (2) of this section shall also contain instructions for completion and filing with the department if it is not completed and filed with a birth certificate as provided in subsection (1) of this section.

(4) The department shall accept completed acknowledgment forms and make available to county attorneys or authorized attorneys a record of acknowledgments it has received, as provided in subsection (1) of section 71-612. The department may prepare photographic, electronic, or other reproductions of acknowledgments. Such reproductions, when certified and approved by the department, shall be accepted as the original records, and the documents from which permanent reproductions have been made may be disposed of as provided by rules and regulations of the department.

(5) The department may by regulation establish a nominal payment and procedure for payment by the department for each acknowledgment filed with the department. The amount of such payments and the entities receiving such payments shall be within the limits allowed by Title IV-D of the federal Social Security Act, as amended.

Source: Laws 1994, LB 1224, § 56; Laws 1996, LB 1044, § 201; Laws 1997, LB 307, § 77; Laws 1997, LB 752, § 100; Laws 2007, LB296, § 128.
Operative date July 1, 2007.

43-1411 Paternity; action to establish; venue; limitation; summons. A civil proceeding to establish the paternity of a child may be instituted, in the court of the district where the child is domiciled or found or, for cases under the Uniform Interstate Family Support Act, where the alleged father is domiciled, by (1) the mother or the alleged father of such child, either during pregnancy or within four years after the child's birth, unless (a) a valid consent or relinquishment has been made pursuant to sections 43-104.08 to 43-104.25 or section 43-105 for purposes of adoption or (b) a county court or separate juvenile court has

jurisdiction over the custody of the child or jurisdiction over an adoption matter with respect to such child pursuant to sections 43-101 to 43-116 or (2) the guardian or next friend of such child or the state, either during pregnancy or within eighteen years after the child's birth. Summons shall issue and be served as in other civil proceedings, except that such summons may be directed to the sheriff of any county in the state and may be served in any county.

Source: Laws 1941, c. 81, § 11, p. 325; C.S.Supp., 1941, § 43-711; R.S. 1943, § 43-1411; R.S. 1943, (1983), § 13-111; Laws 1985, Second Spec. Sess., LB 7, § 75; Laws 1986, LB 813, § 1; Laws 1991, LB 457, § 16; Laws 1993, LB 500, § 54; Laws 1994, LB 1224, § 59; Laws 1995, LB 712, § 29; Laws 1998, LB 1041, § 45; Laws 2007, LB247, § 22.
Operative date June 1, 2007.

Cross Reference

Uniform Interstate Family Support Act, see section 42-701.

43-1414 Genetic testing; procedure; confidentiality; violation; penalty. (1) In any proceeding to establish paternity, the court may, on its own motion, or shall, on a timely request of a party, after notice and hearing, require the child, the mother, and the alleged father to submit to genetic testing to be performed on blood or any other appropriate genetic testing material. Failure to comply with such requirement for genetic testing shall constitute contempt and may be dealt with in the same manner as other contempts. If genetic testing is required, the court shall direct that inherited characteristics be determined by appropriate testing procedures and shall appoint an expert in genetic testing and qualified as an examiner of genetic markers to analyze and interpret the results and to report to the court. The court shall determine the number of experts required.

(2) In any proceeding to establish paternity, the Department of Health and Human Services, county attorneys, and authorized attorneys have the authority to require the child, the mother, and the alleged father to submit to genetic testing to be performed on blood or any other appropriate genetic testing material. All genetic testing shall be performed by a laboratory accredited by the College of American Pathologists or any other national accrediting body or public agency which has requirements that are substantially equivalent to or more comprehensive than those of the college.

(3) Except as authorized under sections 43-1414 to 43-1418, a person shall not disclose information obtained from genetic paternity testing that is done pursuant to such sections.

(4) If an alleged father who is tested as part of an action under such sections is found to be the child's father, the testing laboratory shall retain the genetic testing material of the alleged father, mother, and child for no longer than the period of years prescribed by the national standards under which the laboratory is accredited. If a man is found not to be the child's father, the testing laboratory shall destroy the man's genetic testing material in the presence of a witness after such material is used in the paternity action. The witness may be an individual who is a party to the destruction of the genetic testing material. After the man's genetic testing material is destroyed, the testing laboratory shall make and keep a written record of the destruction and have the individual who witnessed the destruction sign the record. The testing laboratory shall also expunge its records regarding the genetic paternity testing performed

on the genetic testing material in accordance with the national standards under which the laboratory is accredited. The testing laboratory shall retain the genetic testing material of the mother and child for no longer than the period of years prescribed by the national standards under which the laboratory is accredited. After a testing laboratory destroys an individual's genetic testing material as provided in this subsection, it shall notify the adult individual, or the parent or legal guardian of a minor individual, by certified mail that the genetic testing material was destroyed.

(5) A testing laboratory is required to protect the confidentiality of genetic testing material, except as required for a paternity determination. The court and its officers shall not use or disclose genetic testing material for a purpose other than the paternity determination.

(6) A person shall not buy, sell, transfer, or offer genetic testing material obtained under sections 43-1414 to 43-1418.

(7) A testing laboratory shall annually have an independent audit verifying the contracting laboratory's compliance with this section. The audit shall not disclose the names of, or otherwise identify, the test subjects required to submit to testing during the previous year. The testing laboratory shall forward the audit to the department.

(8) Any person convicted of violating this section shall be guilty of a Class IV misdemeanor for the first offense and a Class III misdemeanor for the second or subsequent offense.

(9) For purposes of sections 43-1414 to 43-1418, an expert in genetic testing means a person who has formal doctoral training or postdoctoral training in human genetics.

Source: Laws 1984, LB 845, § 1; Laws 1994, LB 1224, § 61; Laws 1997, LB 752, § 103; Laws 2001, LB 432, § 9; Laws 2007, LB296, § 129.
Operative date July 1, 2007.

Cross Reference

Genetic testing, access to information, see section 43-3327.

ARTICLE 17

INCOME WITHHOLDING FOR CHILD SUPPORT ACT

Section.

43-1718.02. Obligor; subject to income withholding; when; notice; employer or other payor; prohibited acts; violation; penalty; termination or modification; notice; enforcement.

43-1720. Notice to employer, payor, or obligor; contents.

43-1718.02 Obligor; subject to income withholding; when; notice; employer or other payor; prohibited acts; violation; penalty; termination or modification; notice; enforcement. (1) In any case in which services are not provided under Title IV-D of the federal Social Security Act, as amended, and a support order has been issued or modified on or after July 1, 1994, the obligor's income shall be subject to income withholding regardless

of whether or not payments pursuant to such order are in arrears, and the court shall require such income withholding in its order unless:

(a) One of the parties demonstrates and the court finds that there is good cause not to require immediate income withholding; or

(b) A written agreement between the parties providing an alternative arrangement is incorporated into the support order.

(2) If the court pursuant to subsection (1) of this section orders income withholding regardless of whether or not payments are in arrears, the obligor shall prepare a notice to withhold income. The notice to withhold income shall be substantially similar to a prototype prepared by the department and made available by the department to the State Court Administrator and the clerks of the district courts. The notice to withhold shall direct:

(a) That the employer or other payor shall withhold from the obligor's disposable income the amount stated in the notice to withhold for the purpose of satisfying the obligor's ongoing obligation for support payments as they become due and if there are arrearages, reducing such arrearages in child, spousal, or medical support payments arising from the obligor's failure to fully comply with a support order;

(b) That the employer or other payor shall pay to the obligor, on his or her regularly scheduled payday, such income then due which is not required to be withheld as stated on the notice or pursuant to any court order;

(c) That the employer or other payor shall not withhold more than the maximum amount permitted to be withheld under section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b)(2)(A) and (B), and the amount withheld to satisfy an arrearage of child, spousal, or medical support when added to the amount withheld to pay current support and the fee provided for in subdivision (2)(d) of this section shall not exceed such maximum amount;

(d) That the employer or other payor may assess an additional administrative fee from the obligor's disposable income not to exceed two dollars and fifty cents in any calendar month as compensation for the employer's or other payor's reasonable cost incurred in complying with the notice;

(e) That the employer or other payor shall remit, within seven days after the date the obligor is paid and in the manner specified in the notice, the income withheld, less the deduction allowed as an administrative fee by subdivision (2)(d) of this section, to the State Disbursement Unit and shall notify the unit of the date such income was withheld;

(f) That the notice to withhold income shall terminate with respect to the employer or other payor without any court action or action by the obligor thirty days after the obligor ceases employment with or is no longer entitled to income from such employer or other payor;

(g) That the employer or other payor may combine amounts required to be withheld from the income of two or more obligors in a single payment to the unit if the portion of the single payment which is attributable to each individual obligor is separately identified;

(h) That an employer or other payor who fails to withhold and remit income of an obligor after receiving proper notice or who discriminates, demotes, disciplines, or terminates an

employee or payee after receiving a notice to withhold income shall be subject to the penalties prescribed in subsections (4) and (5) of this section; and

(i) That if the employer or other payor receives more than one notice to withhold income of a single obligor and the amount of income available to be withheld pursuant to the limits specified in subdivision (c) of this subsection is insufficient to satisfy the total support amount certified in the notices, the income available shall first be applied to current support. If the total amount of income available to be withheld is insufficient to satisfy the total amount of current support certified by the notices, the employer or other payor shall withhold for each notice the proportion that the amount of the current support certified in such notice bears to the total amount of current support certified in all notices received for the obligor. Any remaining income available to be withheld after current support is satisfied for all notices shall be applied to arrearages. If arrearages are certified in more than one notice, the employer or other payor shall withhold for each notice the proportion that the amount of the arrearage certified in such notice bears to the total amount of arrearage certified in all notices received for the obligor.

Compliance with the order by the employer or other payor shall operate as a discharge of the employer's or other payor's liability to the obligor as to the portion of the obligor's income withheld.

(3) The obligor shall deliver the notice to withhold income to his or her current employer or other payor and provide a copy of such notice to the clerk of the district court.

(4) Any employer or other payor who fails to withhold and remit any income of an obligor receiving income from the employer or other payor, after proper notice as provided in subsection (2) of this section, shall be required to pay to the unit the amount specified in the notice.

(5) An employer or other payor shall not use an order or notice to withhold income or order or the possibility of income withholding as a basis for (a) discrimination in hiring, (b) demotion of an employee or payee, (c) disciplinary action against an employee or payee, or (d) termination of an employee or payee.

Upon application by the obligor and after a hearing on the matter, the court may impose a civil fine of up to five hundred dollars for each violation of this subsection.

An employer or other payor who violates this subsection shall be required to make full restitution to the aggrieved employee or payee, including reinstatement and backpay.

(6) When an obligor ceases employment with or is no longer entitled to income from an employer or other payor, the notice to withhold income shall not cease to operate against the obligor and income withholding shall continue to apply to any subsequent employment or income of the obligor. The notice to withhold income shall terminate with respect to the employer or other payor without any court action or action by the obligor thirty days after the obligor ceases employment with or is no longer entitled to income from such employer or other payor. A notice to withhold income shall also terminate when the child, spousal, or medical support obligation terminates and all past-due support has been paid, in which case the obligor shall notify the employer or other payor to cease withholding income.

(7) A notice to withhold income may be modified or revoked by a court of competent jurisdiction as a result of modification of the support order. A notice to withhold income may also be modified or revoked by a court of competent jurisdiction, for other good cause shown, after notice and a hearing on the issue.

(8) The obligee or obligor may file an action in district court to enforce this section.

(9) If after an order is issued in any case under this section the case becomes one in which services are provided under Title IV-D of the federal Social Security Act, as amended, the county attorney or authorized attorney or the Department of Health and Human Services shall implement income withholding as otherwise provided in the Income Withholding for Child Support Act.

Source: Laws 1994, LB 1224, § 67; Laws 1996, LB 1044, § 204; Laws 1996, LB 1155, § 11; Laws 1997, LB 307, § 80; Laws 1997, LB 752, § 104; Laws 2000, LB 972, § 23; Laws 2007, LB296, § 130. Operative date July 1, 2007.

43-1720 Notice to employer, payor, or obligor; contents. If the department has previously sent a notice of assignment and opportunity for hearing on the same support order under section 48-647, the county attorney, authorized attorney, or the department shall certify the amount to be withheld from an obligor's disposable income pursuant to section 43-1722 and shall notify the obligor's employer or other payor pursuant to section 43-1723. If the department has not previously sent such notice, and except in cases in which the court has ordered income withholding pursuant to subsection (1) of section 43-1718.01 or section 43-1718.02, upon receiving certification pursuant to section 42-358 or notice of delinquent payments of medical support, the county attorney, the authorized attorney, or the department shall send a notice by certified mail to the last-known address of the obligor stating:

(1) That an assignment of his or her income by means of income withholding will go into effect within fifteen days after the date the notice is sent;

(2) That the income withholding will continue to apply to any subsequent employer or other payor of the obligor;

(3) The amount of support the obligor owes;

(4) The amount of income that will be withheld; and

(5) That within the fifteen-day period, the obligor may request a hearing in the manner specified in the notice to contest a mistake of fact. For purposes of this subdivision, mistake of fact shall mean (a) an error in the amount of current or overdue support, (b) an error in the identity of the obligor, or (c) an error in the amount to be withheld as provided in section 43-1722.

Source: Laws 1985, Second Spec. Sess., LB 7, § 40; Laws 1986, LB 600, § 3; Laws 1991, LB 457, § 29; Laws 1993, LB 523, § 15; Laws 1994, LB 1224, § 68; Laws 1996, LB 1044, § 205; Laws 1996, LB 1155, § 12; Laws 1997, LB 307, § 81; Laws 2007, LB296, § 131. Operative date July 1, 2007.

ARTICLE 18

GRANDPARENT VISITATION

Section.

43-1803. Venue; petition; contents; service.

43-1803 Venue; petition; contents; service. (1) If the minor child's parent or parents are deceased or have never been married, a grandparent seeking visitation shall file a petition in the district court in the county in which the minor child resides. If the marriage of the parents of a minor child has been dissolved or a petition for the dissolution of such marriage has been filed, is still pending, but no decree has been entered, a grandparent seeking visitation shall file a petition for such visitation in the district court in the county in which the dissolution was had or the proceedings are taking place. The county court or the district court may hear the proceeding as provided in section 25-2740. The form of the petition and all other pleadings required by this section shall be prescribed by the Supreme Court. The petition shall include the following:

- (a) The name and address of the petitioner and his or her attorney;
 - (b) The name and address of the parent, guardian, or other party having custody of the child or children;
 - (c) The name and address of any parent not having custody of the child or children if applicable;
 - (d) The name and year of birth of each child with whom visitation is sought;
 - (e) The relationship of petitioner to such child or children;
 - (f) An allegation that the parties have attempted to reconcile their differences, but the differences are irreconcilable and such parties have no recourse but to seek redress from the court; and
 - (g) A statement of the relief sought.
- (2) When a petition seeking visitation is filed, a copy of the petition shall be served upon the parent or parents or other party having custody of the child and upon any parent not having custody of such child by personal service or in the manner provided in section 25-517.02.

Source: Laws 1986, LB 105, § 3; Laws 1996, LB 1296, § 26; Laws 1997, LB 229, § 39; Laws 2007, LB221, § 2.
Effective date September 1, 2007.

ARTICLE 19

CHILD ABUSE PREVENTION

Section.

43-1902. Terms, defined.

43-1903. Nebraska Child Abuse Prevention Fund Board; created; members; terms; vacancies; officers; expenses; removal.

43-1904. Board; powers and duties.

43-1905. Department; duties.

43-1902 Terms, defined. As used in sections 43-1901 to 43-1906, unless the context otherwise requires:

- (1) Board means the Nebraska Child Abuse Prevention Fund Board;
- (2) Department means the Department of Health and Human Services; and
- (3) Fund means the Nebraska Child Abuse Prevention Fund.

Source: Laws 1986, LB 333, § 2; Laws 1996, LB 1044, § 206; Laws 2007, LB296, § 132.
Operative date July 1, 2007.

43-1903 Nebraska Child Abuse Prevention Fund Board; created; members; terms; vacancies; officers; expenses; removal. (1) There is hereby created within the department the Nebraska Child Abuse Prevention Fund Board which shall be composed of nine members as follows: Two representatives of the Department of Health and Human Services appointed by the chief executive officer and seven members to be appointed by the Governor with the approval of the Legislature. The Governor shall appoint two members from each of the three congressional districts and one member from the state at large. As a group, the appointed board members (a) shall demonstrate knowledge in the area of child abuse and neglect prevention, (b) shall be representative of the demographic composition of this state, and (c) to the extent practicable, shall be representative of all of the following categories (i) the business community, (ii) the religious community, (iii) the legal community, (iv) professional providers of child abuse and neglect prevention services, and (v) volunteers in child abuse and neglect prevention services.

(2) The term of each appointed board member shall be three years, except that of the board members first appointed, two, including the at-large member, shall serve for three years, three shall serve for two years, and two shall serve for one year. The Governor shall designate the term which each of the members first appointed shall serve when he or she makes the appointments. An appointed board member shall not serve more than two consecutive terms whether partial or full. A vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment.

(3) The board shall elect a chairperson from among the appointed board members who shall serve for a term of two years. The board may elect the other officers and establish committees as it deems appropriate.

(4) The members of the board shall not receive any compensation for their services but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177. The reimbursement shall be paid from the fund. In any one fiscal year, no more than five percent of the annually available funds as provided in section 43-1906 shall be used for the purpose of reimbursement of board members.

(5) Any board member may be removed by the Governor for misconduct, incompetency, or neglect of duty after first being given the opportunity to be heard in his or her own behalf.

Source: Laws 1986, LB 333, § 3; Laws 1996, LB 1044, § 207; Laws 2007, LB296, § 133.
Operative date July 1, 2007.

43-1904 Board; powers and duties. The board shall have the following powers and duties:

(1) To meet not less than twice annually at the call of the chairperson to conduct its official business;

(2) To require that at least five of the board members approve the awarding of grants made under subdivision (3)(b) of this section; and

(3) To develop, one year after the appointment of the original board and annually thereafter, a state plan for the distribution and disbursement of money in the fund. The plan developed under this subdivision shall assure that an equal opportunity exists for the establishment and maintenance of prevention programs and the receipt of money from the fund in all geographic areas of this state. The plan shall be transmitted to the department, the Governor, and the Legislature and made available to the general public. In carrying out a plan developed under this subdivision, the board shall establish procedures for:

(a) Developing and publicizing criteria for the awarding of grants for programs to be supported with money from the fund within the limits of appropriations made for that purpose;

(b) Awarding grants to agencies, organizations, or individuals for community-based child abuse prevention programs. The programs shall provide education, public awareness, or prevention services. In awarding grants under this subdivision, consideration shall be given by the board to factors such as need, geographic location, diversity, coordination with or improvement of existing services, and extensive use of volunteers;

(c) Supporting and encouraging the formation of local child abuse councils;

(d) Consulting with applicable state agencies, commissions, and boards to help determine probable effectiveness, fiscal soundness, and need for proposed community-based educational and service prevention programs;

(e) Facilitating information exchange among groups concerned with prevention programs; and

(f) Encouraging statewide educational and public awareness programs regarding the problems of families and children which (i) encourage professional persons and groups to recognize and deal with problems of families and children, (ii) make information regarding the problems of families and children and the prevention of such problems available to the general public in order to encourage citizens to become involved in the prevention of such problems, and (iii) encourage the development of community prevention programs.

Source: Laws 1986, LB 333, § 4; Laws 2007, LB296, § 134.
Operative date July 1, 2007.

43-1905 Department; duties. The department shall:

(1) Have the power to deny any grant award, or portion of such award, made by the board;

(2) Review and monitor expenditures of money from the fund on a periodic basis; and

(3) Submit to the Governor and the Legislature an annual report of all receipts and disbursements of funds, including the recipients, the nature of the program funded, the dollar amount awarded, and the percentage of the total annually available funds the grant represents. The report may be made available to the public upon request.

Source: Laws 1986, LB 333, § 5; Laws 2007, LB296, § 135.
Operative date July 1, 2007.

ARTICLE 20

MISSING CHILDREN IDENTIFICATION ACT

Section.

43-2002. Legislative findings.

43-2003. Terms, defined.

43-2002 Legislative findings. Each year Nebraska children are reported missing. The Legislature is seeking a procedure whereby it can help locate such missing children through school records and birth certificates filed with the schools and the Department of Health and Human Services.

Source: Laws 1987, LB 599, § 2; Laws 1997, LB 307, § 82; Laws 2007, LB296, § 136.
Operative date July 1, 2007.

43-2003 Terms, defined. As used in the Missing Children Identification Act, unless the context otherwise requires:

(1) County agency means any agency in a county that records and maintains birth certificates;

(2) Department means the Department of Health and Human Services;

(3) Missing person means a person sixteen years of age or younger reported to any law enforcement agency as abducted or lost; and

(4) Patrol means the Nebraska State Patrol.

Source: Laws 1987, LB 599, § 3; Laws 1996, LB 1044, § 208; Laws 1997, LB 307, § 83; Laws 2007, LB296, § 137.
Operative date July 1, 2007.

ARTICLE 24

JUVENILE SERVICES

Section.

43-2411. Nebraska Coalition for Juvenile Justice; created; members; terms; expenses; task forces or subcommittee; authorized.

43-2414. Repealed. Laws 2007, LB 296, § 815.

43-2411 Nebraska Coalition for Juvenile Justice; created; members; terms; expenses; task forces or subcommittee; authorized. (1) The Nebraska Coalition for

Juvenile Justice is created. As provided in the federal act, there shall be no less than fifteen nor more than thirty-three members of the coalition. The coalition members shall be appointed by the Governor and shall include:

- (a) The Administrator of the Office of Juvenile Services;
- (b) The chief executive officer of the Department of Health and Human Services or his or her designee;
- (c) The Commissioner of Education or his or her designee;
- (d) The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice or his or her designee;
- (e) The Executive Director of the Nebraska Association of County Officials or his or her designee;
- (f) The probation administrator of the Office of Probation Administration or his or her designee;
- (g) One county commissioner or supervisor;
- (h) One police chief;
- (i) One sheriff;
- (j) One separate juvenile court judge;
- (k) One county court judge;
- (l) One representative of mental health professionals who works directly with juveniles;
- (m) Three representatives, one from each congressional district, from community-based, private nonprofit organizations who work with juvenile offenders and their families;
- (n) One volunteer who works with juvenile offenders or potential juvenile offenders;
- (o) One person who works with an alternative to incarceration program for juveniles;
- (p) The director or his or her designee from a youth rehabilitation and treatment center;
- (q) The director or his or her designee from a secure youth confinement facility;
- (r) The director or his or her designee from a staff secure youth confinement facility;
- (s) At least five members who are under twenty-four years of age when appointed;
- (t) One person who works directly with juveniles who have learning or emotional difficulties or are abused or neglected;
- (u) One member of the Nebraska Commission on Law Enforcement and Criminal Justice;
- (v) One county attorney; and
- (w) One public defender.

(2) The terms of members appointed pursuant to subdivisions (1)(g) through (1)(w) of this section shall be three years, except that the terms of the initial members of the coalition shall be staggered so that one-third of the members are appointed for terms of one year, one-third for terms of two years, and one-third for terms of three years, as determined by the Governor. A majority of the coalition members, including the chairperson, shall not be full-time employees of federal, state, or local government. At least one-fifth of the coalition members shall be under the age of twenty-four at the time of appointment. Any vacancy

on the coalition shall be filled by appointment by the Governor. The coalition shall select a chairperson, a vice-chairperson, and such other officers as it deems necessary.

(3) Members of the coalition shall be reimbursed for their actual and necessary expenses pursuant to sections 81-1174 to 81-1177.

(4) The coalition may appoint task forces or subcommittees to carry out its work. Task force and subcommittee members shall have knowledge of, responsibility for, or interest in an area related to the duties of the coalition.

Source: Laws 1990, LB 663, § 11; Laws 1996, LB 1044, § 209; Laws 1997, LB 424, § 8; Laws 2000, LB 1167, § 48; Laws 2007, LB296, § 138.
Operative date July 1, 2007.

43-2414 Repealed. Laws 2007, LB 296, § 815.

ARTICLE 25

INFANTS WITH DISABILITIES

Section.

43-2503. Purposes of act.

43-2505. Terms, defined.

43-2507. Collaborating agency; statewide system; components; duties; sharing information and data.

43-2508. Department of Health and Human Services; duties.

43-2509. Department of Health and Human Services; duties.

43-2510. Department of Health and Human Services; duties.

43-2511. Statewide billing system; establishment; participation required.

43-2512. Interagency planning team; members; duties; Department of Health and Human Services; provide services coordination.

43-2515. Federal medicaid funds; certification; appropriations.

43-2503 Purposes of act. The purposes of the Early Intervention Act shall be to:

(1) Develop and implement a statewide system of comprehensive, coordinated, family-centered, community-based, and culturally competent early intervention services for infants or toddlers with disabilities and their families through the collaboration of the Department of Health and Human Services, the State Department of Education, and all other relevant agencies or organizations at the state, regional, and local levels;

(2) Establish and implement a billing system for accessing federal medicaid funds;

(3) Establish and implement services coordination through a community team approach;

(4) Facilitate the coordination of payment for early intervention services from federal, state, local, and private sources including public and private insurance coverage; and

(5) Enhance Nebraska's capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to eligible infants or toddlers with disabilities and their families.

Source: Laws 1991, LB 701, § 3; Laws 1993, LB 520, § 7; Laws 1996, LB 1044, § 210; Laws 2007, LB296, § 139.
Operative date July 1, 2007.

43-2505 Terms, defined. For purposes of the Early Intervention Act:

(1) Collaborating agencies means the Department of Health and Human Services and the State Department of Education;

(2) Developmental delay has the definition found in section 79-1118.01;

(3) Early intervention services may include services which:

(a) Are designed to meet the developmental needs of each eligible infant or toddler with disabilities and the needs of the family related to enhancing the development of their infant or toddler;

(b) Are selected in collaboration with the parent or guardian;

(c) Are provided in accordance with an individualized family service plan;

(d) Meet all applicable federal and state standards; and

(e) Are provided, to the maximum extent appropriate, in natural environments including the home and community settings in which infants and toddlers without disabilities participate;

(4) Eligible infant or toddler with disabilities means a child who needs early intervention services and is two years of age or younger, except that toddlers who reach age three during the school year shall remain eligible throughout that school year. The need for early intervention services is established when the infant or toddler experiences developmental delays or any of the other disabilities described in the Special Education Act;

(5) Federal early intervention program means the federal early intervention program for infants and toddlers with disabilities, 20 U.S.C. 1471 to 1485;

(6) Individualized family service plan means the process, periodically documented in writing, of determining appropriate early intervention services for an eligible infant or toddler with disabilities and his or her family;

(7) Interagency planning team means an organized group of interdisciplinary, interagency representatives, community leaders, and family members in each local community or region;

(8) Lead agency or agencies means the Department of Health and Human Services, the State Department of Education, and any other agencies designated by the Governor for general administration, supervision, and monitoring of programs and activities receiving federal funds under the federal early intervention program and state funds appropriated for early intervention services under the Early Intervention Act; and

(9) Services coordination means a flexible process of interaction facilitated by a services coordinator to assist the family of an eligible infant or toddler with disabilities within a community to identify and meet their needs pursuant to the act. Services coordination under the act shall not duplicate any case management services which an eligible infant or toddler with disabilities and his or her family are already receiving or eligible to receive from other sources.

Source: Laws 1991, LB 701, § 4; Laws 1993, LB 520, § 8; Laws 1996, LB 900, § 1048; Laws 1996, LB 1044, § 211; Laws 1997, LB 346, § 1; Laws 1999, LB 813, § 2; Laws 2000, LB 1135, § 9; Laws 2006, LB 994, § 56; Laws 2007, LB296, § 140.
Operative date July 1, 2007.

Cross Reference

Special Education Act, see section 79-1110.

43-2507 Collaborating agency; statewide system; components; duties; sharing information and data.

(1) Planning for early intervention services shall be the responsibility of each collaborating agency. The planning shall address a statewide system of comprehensive, coordinated, family-centered, community-based, and culturally competent early intervention services to all eligible infants or toddlers with disabilities and their families in Nebraska. The statewide system shall include the following minimum components:

- (a) A public awareness program, including a central directory;
- (b) A comprehensive early identification system, including a system for identifying children and making referrals for infants or toddlers who may be eligible for early intervention services;
- (c) Common intake, referral, and assessment processes, procedures, and forms to determine eligibility of infants and toddlers and their families referred for early intervention services;
- (d) An individualized family service plan, including services coordination, for each eligible infant or toddler with disabilities and his or her family;
- (e) A comprehensive system of personnel development;
- (f) A uniform computer data base and reporting system which crosses agency lines; and
- (g) Services coordination to access the following early intervention services: Audiology; family training, counseling, and home visits; health services; medical services only for diagnostic or evaluation purposes; nursing services; nutrition services; occupational therapy; physical therapy; psychological services; social work services; special instruction; speech-language pathology; transportation and related costs that are necessary to enable an eligible infant or toddler with disabilities and his or her family to receive early intervention services; assistive technology devices and assistive technology services; vision services; and hearing services.

(2) Collaborating agencies shall review standards to ensure that personnel are appropriately and adequately prepared and trained to carry out the Early Intervention Act.

(3) Collaborating agencies shall be responsible for designing, supporting, and implementing a statewide training and technical assistance plan which shall address preservice, inservice, and leadership development for service providers and parents of eligible infants and toddlers with disabilities.

(4) Policies and procedures shall be jointly examined and analyzed by the collaborating agencies to satisfy data collection requirements under the federal early intervention program and to assure the confidentiality of the data contained in the statewide system. Notwithstanding any other provision of state law, the collaborating agencies shall be permitted to share information and data necessary to carry out the provisions of the federal

early intervention program, including the personal identification or other specific information concerning individual infants, toddlers, or their families, except that the vital and medical records and health information concerning individuals provided to the Department of Health and Human Services may be released only under the laws authorizing the provision of such records and information. Nothing in this section shall prohibit the use of such data to provide for the preparation of reports, fiscal information, or other documents required by the Early Intervention Act, but no information in such reports, fiscal information, or other documents shall be used in a manner which would allow for the personal identification of an individual infant, toddler, or family.

Source: Laws 1991, LB 701, § 6; Laws 1993, LB 520, § 10; Laws 1996, LB 1044, § 212; Laws 2006, LB 994, § 57; Laws 2007, LB296, § 141.
Operative date July 1, 2007.

43-2508 Department of Health and Human Services; duties. (1) The Department of Health and Human Services shall be responsible for providing or contracting for services.

(2) Whenever possible, the medical assistance program prescribed in the Medical Assistance Act shall be used for payment of services coordination.

(3) It is the intent of this section that the department shall apply for and implement a Title XIX medicaid waiver as a way to assist in the provision of services coordination to eligible infants or toddlers with disabilities and their families.

Source: Laws 1991, LB 701, § 7; Laws 1993, LB 520, § 13; Laws 1996, LB 1044, § 213; Laws 2006, LB 994, § 58; Laws 2006, LB 1248, § 55; Laws 2007, LB296, § 142.
Operative date July 1, 2007.

Cross Reference

Medical Assistance Act, see section 68-901.

43-2509 Department of Health and Human Services; duties. The Department of Health and Human Services is responsible for incorporating components required under the federal early intervention program into the state plans developed for the Special Supplemental Nutrition Program for Women, Infants, and Children, the Commodity Supplemental Food Program, the maternal and child health program, and the developmental disabilities program. The department shall provide technical assistance, planning, and coordination related to the incorporation of such components.

Source: Laws 1991, LB 701, § 8; Laws 1993, LB 520, § 14; Laws 1996, LB 1044, § 214; Laws 2006, LB 994, § 59; Laws 2007, LB296, § 143.
Operative date July 1, 2007.

43-2510 Department of Health and Human Services; duties. The Department of Health and Human Services is responsible for incorporating components required under the federal early intervention program into the mental health and developmental disabilities planning responsibilities of the department. The department shall provide technical assistance, planning, and coordination related to the incorporation of such components.

Source: Laws 1991, LB 701, § 9; Laws 1993, LB 520, § 15; Laws 1996, LB 1044, § 215; Laws 2006, LB 994, § 60; Laws 2007, LB296, § 144.
Operative date July 1, 2007.

43-2511 Statewide billing system; establishment; participation required. There is hereby established a statewide billing system for accessing federal medicaid funds for special education and related services provided by school districts. The system shall apply to all students verified with disabilities from date of diagnosis to twenty-one years of age as allowed under the federal Medicare Catastrophic Coverage Act of 1988. The system shall be developed jointly by the Department of Health and Human Services and the State Department of Education. School districts, educational service units, or approved cooperatives providing special education and related services shall be required to participate in the statewide billing system. It is the intent of this section that costs to school districts associated with the implementation of such a system shall be eligible for payment through the medicaid reimbursement rates to be established for each therapy.

Source: Laws 1991, LB 701, § 10; Laws 1993, LB 520, § 16; Laws 1996, LB 1044, § 216; Laws 2007, LB296, § 145.
Operative date July 1, 2007.

43-2512 Interagency planning team; members; duties; Department of Health and Human Services; provide services coordination. Each region established pursuant to section 79-1135 shall establish an interagency planning team, which planning team shall include representatives from school districts, social services, health and medical services, parents, and mental health, developmental disabilities, Head Start, and other relevant agencies or persons serving children from birth to age five and their families and parents or guardians. Each interagency planning team shall be responsible for assisting in the planning and implementation of the Early Intervention Act in each local community or region. The Department of Health and Human Services, in collaboration with each regional interagency planning team, shall provide or contract for services coordination.

Source: Laws 1991, LB 701, § 11; Laws 1993, LB 520, § 18; Laws 1996, LB 900, § 1050; Laws 1996, LB 1044, § 217; Laws 2006, LB 994, § 61; Laws 2007, LB296, § 146.
Operative date July 1, 2007.

43-2515 Federal medicaid funds; certification; appropriations. On or before October 1, 1993, and for each year thereafter, the Department of Health and Human Services and the State Department of Education shall jointly certify to the budget administrator of the budget division of the Department of Administrative Services the amount of federal medicaid funds paid to school districts pursuant to the Early Intervention Act for special education services for children five years of age and older. The General Fund appropriation to the State Department of Education for state special education aid shall be decreased by an amount equal to the amount that would have been reimbursed with state general funds to the school districts through the special education reimbursement process for special education

services for children five years of age and older that was paid to school districts or approved cooperatives with federal medicaid funds.

It is the intent of the Legislature that an amount equal to the amount that would have been reimbursed with state general funds to the school districts, certified to the budget administrator, be appropriated from the General Fund to aid in carrying out the provisions of the Early Intervention Act and other related early intervention services.

Source: Laws 1993, LB 520, § 20; Laws 1996, LB 1044, § 218; Laws 1998, Spec. Sess., LB 1, § 4; Laws 2007, LB296, § 147.
Operative date July 1, 2007.

ARTICLE 26

CHILD CARE

Section.

43-2605. Terms, defined.

43-2606. Providers of child care and school-age-care programs; training requirements.

43-2616. Family child care home; location.

43-2617. Program provider; communicable disease; notice to parents.

43-2620. Collaboration of activities; duties.

43-2605 Terms, defined. For purposes of the Quality Child Care Act:

(1) Child care shall mean the care and supervision of children in lieu of parental care and supervision and shall include programs; and

(2) Programs shall mean the programs listed in subdivision (2) of section 71-1910.

Source: Laws 1991, LB 836, § 5; Laws 1995, LB 401, § 5; Laws 2007, LB296, § 148.
Operative date July 1, 2007.

43-2606 Providers of child care and school-age-care programs; training requirements. (1) The Department of Health and Human Services shall adopt and promulgate rules and regulations for mandatory training requirements for providers of child care and school-age-care programs. Such requirements shall include preservice orientation and at least four hours of annual inservice training. All child care programs required to be licensed under section 71-1911 shall show completion of a preservice orientation approved or delivered by the department prior to receiving a provisional license.

(2) The department shall initiate a system of documenting the training levels of staff in specific child care settings to assist parents in selecting optimal care settings.

(3) The training requirements shall be designed to meet the health, safety, and developmental needs of children and shall be tailored to the needs of licensed providers of child care programs. The training requirements for providers of child care programs shall include, but not be limited to, information on sudden infant death syndrome, shaken baby syndrome, and child abuse.

(4) The department shall provide or arrange for training opportunities throughout the state and shall provide information regarding training opportunities to all providers of child care programs at the time of registration or licensure, when renewing a registration, or on a yearly basis following licensure.

(5) Each provider of child care and school-age-care programs receiving orientation or training shall provide his or her social security number to the department.

(6) The department shall review and provide recommendations to the Governor for updating rules and regulations adopted and promulgated under this section at least every five years.

Source: Laws 1991, LB 836, § 6; Laws 1995, LB 401, § 6; Laws 1996, LB 1044, § 219; Laws 1997, LB 307, § 89; Laws 1997, LB 310, § 2; Laws 1997, LB 752, § 106; Laws 1999, LB 594, § 22; Laws 1999, LB 828, § 4; Laws 2006, LB 994, § 62; Laws 2007, LB296, § 149.
Operative date July 1, 2007.

43-2616 Family child care home; location. Notwithstanding any other provision of law, including section 71-1914, family child care homes licensed by the Department of Health and Human Services pursuant to section 71-1911 or by a city, village, or county pursuant to subsection (2) of section 71-1914 may be established and operated in any residential zone within the exercised zoning jurisdiction of any city or village.

Source: Laws 1991, LB 836, § 16; Laws 1995, LB 401, § 16; Laws 1996, LB 1044, § 227; Laws 1997, LB 307, § 97; Laws 1999, LB 594, § 25; Laws 2007, LB296, § 150.
Operative date July 1, 2007.

43-2617 Program provider; communicable disease; notice to parents. A provider of a program shall notify the parents of enrolled children of the outbreak of any communicable disease in any child in the program on the same day the provider is informed of or observes the outbreak. The Department of Health and Human Services shall develop appropriate procedures to carry out this section.

Source: Laws 1991, LB 836, § 17; Laws 1995, LB 401, § 17; Laws 1996, LB 1044, § 228; Laws 1997, LB 307, § 98; Laws 2007, LB296, § 151.
Operative date July 1, 2007.

43-2620 Collaboration of activities; duties. The Department of Health and Human Services and the State Department of Education shall collaborate in their activities and may:

(1) Encourage the development of comprehensive systems of child care programs and early childhood education programs which promote the wholesome growth and educational development of children, regardless of the child's level of ability;

(2) Encourage and promote the provision of parenting education, developmentally appropriate activities, and primary prevention services by program providers;

(3) Facilitate cooperation between the private and public sectors in order to promote the expansion of child care;

(4) Promote continuing study of the need for child care and early childhood education and the most effective methods by which these needs can be served through governmental and private programs;

(5) Coordinate activities with other state agencies serving children and families;

(6) Strive to make the state a model employer by encouraging the state to offer a variety of child care benefit options to its employees;

(7) Provide training for early childhood education providers as authorized in sections 79-1101 to 79-1103;

(8) Develop and support resource and referral services for parents and providers that will be in place statewide by January 1, 1994;

(9) Promote the involvement of businesses and communities in the development of child care throughout the state by providing technical assistance to providers and potential providers of child care;

(10) Establish a voluntary accreditation process for public and private child care and early childhood education providers, which process promotes program quality;

(11) At least biennially, develop an inventory of programs and early childhood education programs provided to children in Nebraska and identify the number of children receiving and not receiving such services, the types of programs under which the services are received, and the reasons children not receiving the services are not being served; and

(12) Support the identification and recruitment of persons to provide child care for children with special needs.

Source: Laws 1991, LB 836, § 20; Laws 1995, LB 401, § 19; Laws 1996, LB 900, § 1052; Laws 1996, LB 1044, § 229; Laws 1997, LB 307, § 99; Laws 1999, LB 594, § 26; Laws 2000, LB 1135, § 10; Laws 2007, LB296, § 152.
Operative date July 1, 2007.

ARTICLE 29

PARENTING ACT

Section.

- 43-2901. Repealed. Laws 2007, LB 554, § 49.
- 43-2902. Repealed. Laws 2007, LB 554, § 49.
- 43-2903. Repealed. Laws 2007, LB 554, § 49.
- 43-2904. Repealed. Laws 2007, LB 554, § 49.
- 43-2905. Repealed. Laws 2007, LB 554, § 49.
- 43-2906. Repealed. Laws 2007, LB 554, § 49.
- 43-2907. Repealed. Laws 2007, LB 554, § 49.
- 43-2908. Repealed. Laws 2007, LB 554, § 49.
- 43-2909. Repealed. Laws 2007, LB 554, § 49.
- 43-2910. Repealed. Laws 2007, LB 554, § 49.
- 43-2911. Repealed. Laws 2007, LB 554, § 49.
- 43-2912. Repealed. Laws 2007, LB 554, § 49.
- 43-2913. Repealed. Laws 2007, LB 554, § 49.
- 43-2914. Repealed. Laws 2007, LB 554, § 49.
- 43-2915. Repealed. Laws 2007, LB 554, § 49.

- 43-2916. Repealed. Laws 2007, LB 554, § 49.
- 43-2917. Repealed. Laws 2007, LB 554, § 49.
- 43-2917.01. Repealed. Laws 2007, LB 554, § 49.
- 43-2918. Repealed. Laws 2007, LB 554, § 49.
- 43-2919. Repealed. Laws 2007, LB 554, § 49.
- 43-2920. Act, how cited.
- 43-2921. Legislative findings.
- 43-2922. Terms, defined.
- 43-2923. Best interests of the child requirements; absence or relocation; how treated; military service and deployment out of state.
- 43-2924. Applicability of act.
- 43-2925. Proceeding in which parenting functions for child are at issue; information provided to parties; filing required.
- 43-2926. State Court Administrator; create information sheet; contents; parenting plan mediation; distribution of information sheet.
- 43-2927. Training; screening guidelines and safety procedures; State Court Administrator's office; duties.
- 43-2928. Attendance at basic level parenting education course; delay or waiver; second-level parenting education course; child of divorce education course; State Court Administrator; duties; costs.
- 43-2929. Parenting plan; developed; approved by court; contents.
- 43-2930. Child information affidavit; when required; filing and service; contents; hearing; temporary parenting order; contents; form; temporary support.
- 43-2931. Final child information affidavit; when required; filing and service; contents; form.
- 43-2932. Development of parenting plan; limitations to protect child or child's parent from harm; effect of court determination; burden of proof.
- 43-2933. Registered sex offender; other criminal convictions; limitation on or denial of custody or access to child; presumption; modification of previous order.
- 43-2934. Restraining order, protection order, or criminal no-contact order; effect; court findings.
- 43-2935. Hearing; parenting plan; modification; court powers.
- 43-2936. Referral to mediation, specialized alternative dispute resolution, or other alternative dispute resolution process; information provided to parties.
- 43-2937. Court referral to mediation or specialized alternative dispute resolution; temporary relief; specialized alternative dispute resolution rule; approval; mandatory court order; when.
- 43-2938. Mediator; qualifications; training; approved specialized mediator; requirements.
- 43-2939. Parenting Act mediator; duties; conflict of interest; report of child abuse or neglect; termination of mediation.
- 43-2940. Mediation; uniform standards of practice; State Court Administrator; duties; mediation conducted in private.
- 43-2941. Mediation subject to other laws; claim of privilege; disclosures authorized.
- 43-2942. Costs.
- 43-2943. Rules; Parenting Act Fund; created; use; investment.

43-2901 Repealed. Laws 2007, LB 554, § 49.
Operative date January 1, 2008.

43-2902 Repealed. Laws 2007, LB 554, § 49.
Operative date January 1, 2008.

- 43-2903 Repealed.** Laws 2007, LB 554, § 49.
Operative date January 1, 2008.
- 43-2904 Repealed.** Laws 2007, LB 554, § 49.
Operative date January 1, 2008.
- 43-2905 Repealed.** Laws 2007, LB 554, § 49.
Operative date January 1, 2008.
- 43-2906 Repealed.** Laws 2007, LB 554, § 49.
Operative date January 1, 2008.
- 43-2907 Repealed.** Laws 2007, LB 554, § 49.
Operative date January 1, 2008.
- 43-2908 Repealed.** Laws 2007, LB 554, § 49.
Operative date January 1, 2008.
- 43-2909 Repealed.** Laws 2007, LB 554, § 49.
Operative date January 1, 2008.
- 43-2910 Repealed.** Laws 2007, LB 554, § 49.
Operative date January 1, 2008.
- 43-2911 Repealed.** Laws 2007, LB 554, § 49.
Operative date January 1, 2008.
- 43-2912 Repealed.** Laws 2007, LB 554, § 49.
Operative date January 1, 2008.
- 43-2913 Repealed.** Laws 2007, LB 554, § 49.
Operative date January 1, 2008.
- 43-2914 Repealed.** Laws 2007, LB 554, § 49.
Operative date January 1, 2008.
- 43-2915 Repealed.** Laws 2007, LB 554, § 49.
Operative date January 1, 2008.
- 43-2916 Repealed.** Laws 2007, LB 554, § 49.
Operative date January 1, 2008.
- 43-2917 Repealed.** Laws 2007, LB 554, § 49.
Operative date January 1, 2008.
- 43-2917.01 Repealed.** Laws 2007, LB 554, § 49.
Operative date January 1, 2008.
- 43-2918 Repealed.** Laws 2007, LB 554, § 49.
Operative date January 1, 2008.

43-2919 Repealed. Laws 2007, LB 554, § 49.
Operative date January 1, 2008.

43-2920 Act, how cited. Sections 43-2920 to 43-2943 shall be known and may be cited as the Parenting Act.

Source: Laws 2007, LB554, § 1.
Operative date January 1, 2008.

43-2921 Legislative findings. The Legislature finds that it is in the best interests of a child that a parenting plan be developed in any proceeding under Chapter 42 involving custody, parenting time, visitation, or other access with a child and that the parenting plan establish specific individual responsibility for performing such parenting functions as are necessary and appropriate for the care and healthy development of each child affected by the parenting plan.

The Legislature further finds that it is in the best interests of a child to have a safe, stable, and nurturing environment. The best interests of each child shall be paramount and consideration shall be given to the desires and wishes of the child if of an age of comprehension regardless of chronological age, when such desires and wishes are based on sound reasoning.

In any proceeding involving a child, the best interests of the child shall be the standard by which the court adjudicates and establishes the individual responsibilities, including consideration in any custody, parenting time, visitation, or other access determinations as well as resolution of conflicts affecting each child. The state presumes the critical importance of the parent-child relationship in the welfare and development of the child and that the relationship between the child and each parent should be equally considered unless it is contrary to the best interests of the child.

Given the potential profound effects on children from witnessing child abuse or neglect or domestic intimate partner abuse, as well as being directly abused, the courts shall recognize the duty and responsibility to keep the child or children safe when presented with a preponderance of the evidence of child abuse or neglect or domestic intimate partner abuse, including evidence of a child being used by the abuser to establish or maintain power and control over the victim. In domestic intimate partner abuse cases, the best interests of each child are often served by keeping the child and the victimized partner safe and not allowing the abuser to continue the abuse. When child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict prevents the best interests of the child from being served in the parenting arrangement, then the safety and welfare of the child is paramount in the resolution of those conflicts.

Source: Laws 2007, LB554, § 2.
Operative date January 1, 2008.

43-2922 Terms, defined. For purposes of the Parenting Act:

(1) Appropriate means reflective of the developmental abilities of the child taking into account any cultural traditions that are within the boundaries of state and federal law;

(2) Approved mediation center means a mediation center approved by the Office of Dispute Resolution;

(3) Best interests of the child means the determination made taking into account the requirements stated in section 43-2923;

(4) Child means a minor under nineteen years of age;

(5) Child abuse or neglect has the same meaning as in section 28-710;

(6) Court conciliation program means a court-based conciliation program under the Conciliation Court Law;

(7) Custody includes legal custody and physical custody;

(8) Domestic intimate partner abuse means:

(a) An act of abuse, as defined in section 42-903, and the existence of a pattern or history of such an act without any recency or frequency requirement, including, but not limited to, one or more of the following: Physical assault or sexual assault, threats of physical assault or sexual assault, stalking, harassment, mental cruelty, emotional abuse, intimidation, isolation, economic abuse, or coercion against any current or past intimate partner or an abuser using a child to establish or maintain power and control over any current or past intimate partner. The following acts shall be included within the definition of domestic intimate partner abuse if the acts contributed to coercion or intimidation of the intimate partner:

(i) An act of child abuse or neglect or a threat of such act. A finding by a child protection agency shall not be considered res judicata or collateral estoppel regarding such issue and shall not be considered by the court unless each parent is afforded the opportunity to challenge any such determination;

(ii) Cruel mistreatment or cruel neglect of an animal, as defined in section 28-1008, or a threat of such act; or

(iii) Other acts of abuse, assault, or harassment, or threats of such acts, against other family or household members; or

(b) One act of physical violence resulting in serious bodily injury against any current or past intimate partner, excluding any act of self-defense;

(9) Economic abuse means causing or attempting to cause an individual to be financially dependent by maintaining total control over the individual's financial resources, including, but not limited to, withholding access to money or credit cards, forbidding attendance at school or employment, stealing from or defrauding of money or assets, exploiting the victim's resources for personal gain of the abuser, or withholding physical resources such as food, clothing, necessary medications, or shelter;

(10) Emotional abuse means a pattern of acts, threats of acts, or coercive tactics, including, but not limited to, threatening or intimidating to gain compliance, destruction of the victim's personal property or threats to do so, violence to an animal or object in the presence of the victim as a way to instill fear, yelling, screaming, name-calling, shaming, mocking, or criticizing the victim, possessiveness, or isolation from friends and family. Emotional abuse can be verbal or nonverbal;

(11) Joint legal custody means mutual authority and responsibility of the parents for making mutual fundamental decisions regarding the child's welfare, including choices regarding education and health;

(12) Joint physical custody means mutual authority and responsibility of the parents regarding the child's place of residence and the exertion of continuous blocks of parenting time by both parents over the child for significant periods of time;

(13) Legal custody means the authority and responsibility for making fundamental decisions regarding the child's welfare, including choices regarding education and health;

(14) Mediation means a method of nonjudicial intervention in which a trained, neutral third-party mediator, who has no decisionmaking authority, provides a structured process in which individuals and families in conflict work through parenting and other related family issues with the goal of achieving a voluntary, mutually agreeable parenting plan or related resolution;

(15) Office of Dispute Resolution means the office established under section 25-2904;

(16) Parenting functions means those aspects of the relationship in which a parent or person in the parenting role makes fundamental decisions and performs fundamental functions necessary for the care and development of a child. Parenting functions include, but are not limited to:

(a) Maintaining a safe, stable, consistent, and nurturing relationship with the child;

(b) Attending to the ongoing developmental needs of the child, including feeding, clothing, physical care and grooming, health and medical needs, emotional stability, supervision, and appropriate conflict resolution skills and engaging in other activities appropriate to the healthy development of the child within the social and economic circumstances of the family;

(c) Attending to adequate education for the child, including remedial or other special education essential to the best interests of the child;

(d) Assisting the child in maintaining a safe, positive, and appropriate relationship with each parent and other family members, including establishing and maintaining the authority and responsibilities of each party with respect to the child and honoring the parenting plan duties and responsibilities;

(e) Minimizing the child's exposure to harmful parental conflict;

(f) Assisting the child in developing skills to maintain safe, positive, and appropriate interpersonal relationships; and

(g) Exercising appropriate support for social, academic, athletic, or other special interests and abilities of the child within the social and economic circumstances of the family;

(17) Parenting plan means a plan for parenting the child that takes into account parenting functions;

(18) Parenting time, visitation, or other access means communication or time spent between the child and parent, the child and a court-appointed guardian, or the child and another family member or members;

(19) Physical custody means authority and responsibility regarding the child's place of residence and the exertion of continuous parenting time for significant periods of time;

(20) Provisions for safety means a plan developed to reduce risks of harm to children and adults who are victims of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict;

(21) Remediation process means the method established in the parenting plan which maintains the best interests of the child and provides a means to identify, discuss, and attempt to resolve future circumstantial changes or conflicts regarding the parenting functions and which minimizes repeated litigation and utilizes judicial intervention as a last resort;

(22) Specialized alternative dispute resolution means a method of nonjudicial intervention in high conflict or domestic intimate partner abuse cases in which an approved specialized mediator facilitates voluntary mutual development of and agreement to a structured parenting plan, provisions for safety, a transition plan, or other related resolution between the parties;

(23) Transition plan means a plan developed to reduce exposure of the child and the adult to ongoing unresolved parental conflict during parenting time, visitation, or other access for the exercise of parental functions; and

(24) Unresolved parental conflict means persistent conflict in which parents are unable to resolve disputes about parenting functions which has a potentially harmful impact on a child.

Source: Laws 2007, LB554, § 3.
Operative date January 1, 2008.

Cross Reference

Conciliation Court Law, see section 42-802.

43-2923 Best interests of the child requirements; absence or relocation; how treated; military service and deployment out of state. (1) The best interests of the child require:

(a) A parenting arrangement and parenting plan or other court-ordered arrangement which provides for a child's safety, emotional growth, health, stability, and physical care;

(b) When a preponderance of the evidence indicates domestic intimate partner abuse, a parenting and visitation arrangement that provides for the safety of a victim parent;

(c) That the child's families and those serving in parenting roles remain appropriately active and involved in parenting with safe, appropriate, continuing quality contact between children and their families when they have shown the ability to act in the best interests of the child and have shared in the responsibilities of raising the child;

(d) That even when parents have voluntarily negotiated or mutually mediated and agreed upon a parenting plan, the court shall determine whether it is in the best interests of the child for parents to maintain continued communications with each other and to make joint decisions in performing parenting functions as are necessary for the care and healthy development of the child. If the court rejects a parenting plan, the court shall provide written findings as to why the parenting plan is not in the best interests of the child; and

(e) That certain principles provide a basis upon which education of parents is delivered and upon which negotiation and mediation of parenting plans are conducted. Such principles

shall include: To minimize the potentially negative impact of parental conflict on children; to provide parents the tools they need to reach parenting decisions that are in the best interests of a child; to provide alternative dispute resolution or specialized alternative dispute resolution options that are less adversarial for the child and the family; to ensure that the child's voice is heard and considered in parenting decisions; to maximize the safety of family members through the justice process; and, in cases of domestic intimate partner abuse or child abuse or neglect, to incorporate the principles of victim safety and sensitivity, offender accountability, and community safety in parenting plan decisions.

(2)(a) If a party is absent or relocates from the family residence, the court shall not consider the absence or relocation as a factor in determining the best interests of the child if:

(i) The absence or relocation is of short duration or by agreement of the parties and the court finds that, during the period of absence or relocation, the party has demonstrated an interest in maintaining custody, parenting time, visitation, or other access, the party maintains, or makes reasonable efforts to maintain, regular contact with the child, and the party's behavior demonstrates no intent to abandon the child;

(ii) The party is absent or relocates because of an act or acts of actual or threatened abuse by the other party; or

(iii) The party is absent or relocates because there is a protection order, restraining order, or criminal no-contact order issued that excludes the party from the dwelling of the other party or the child or otherwise enjoins the party from assault or harassment against the other party or the child.

(b) This subsection does not apply to a party who abandons a child as provided in section 28-705.

(3) A party's absence, relocation, or failure to comply with custody, parenting time, visitation, or other access orders shall not, by itself, be sufficient to justify a modification of an order if the reason for the absence, relocation, or failure to comply is the party's activation to military service and deployment out of state.

Source: Laws 2007, LB554, § 4.
Operative date January 1, 2008.

43-2924 Applicability of act. (1) The Parenting Act shall apply to proceedings or modifications in which parenting functions for a child are at issue under Chapter 42, including, but not limited to, proceedings or modification of orders for dissolution of marriage and child custody. The Parenting Act may apply to proceedings or modifications in which parenting functions for a child are at issue under Chapter 30 or 43.

(2) The Parenting Act does not apply in any action filed by a county attorney or authorized attorney pursuant to his or her duties under section 42-358, 43-512 to 43-512.18, or 43-1401 to 43-1418, the Income Withholding for Child Support Act, the Revised Uniform Reciprocal Enforcement of Support Act before January 1, 1994, or the Uniform Interstate Family Support Act for purposes of the establishment of paternity and the establishment and enforcement of child and medical support. A county attorney or authorized attorney shall not participate in the development of or court review of a parenting plan under the Parenting Act. If both parents

are parties to a paternity or support action filed by a county attorney or authorized attorney, the parents may proceed with a parenting plan.

Source: Laws 2007, LB554, § 5.
Operative date January 1, 2008.

Cross Reference

Income Withholding for Child Support Act, see section 43-1701.
Revised Uniform Reciprocal Enforcement of Support Act, see section 42-7,105.
Uniform Interstate Family Support Act, see section 42-701.

43-2925 Proceeding in which parenting functions for child are at issue; information provided to parties; filing required. (1) In any proceeding under Chapter 30 or 43 in which the parenting functions for a child are at issue, except any proceeding under the Revised Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act, subsequent to the initial filing or upon filing of an application for modification of a decree, the parties shall receive from the clerk of the court information regarding the parenting plan, the mediation process, and resource materials, as well as the availability of mediation through court conciliation programs or approved mediation centers.

(2) In any proceeding under Chapter 42 and the Parenting Act in which the parenting functions for a child are at issue, subsequent to the filing of such proceeding all parties shall receive from the clerk of the court information regarding:

- (a) The litigation process;
- (b) A dissolution or separation process timeline;
- (c) Healthy parenting approaches during and after the proceeding;
- (d) Information on child abuse or neglect, domestic intimate partner abuse, and unresolved parental conflict;
- (e) Mediation, specialized alternative dispute resolution, and other alternative dispute resolution processes available through court conciliation programs and approved mediation centers;
- (f) Resource materials identifying the availability of services for victims of child abuse or neglect and domestic intimate partner abuse; and
- (g) Intervention programs for batterers or abusers.

(3) The clerk of the court and counsel for represented parties shall file documentation of compliance with this section. Development of these informational materials and the implementation of this section shall be accomplished through the State Court Administrator.

Source: Laws 2007, LB554, § 6.
Operative date January 1, 2008.

Cross Reference

Revised Uniform Reciprocal Enforcement of Support Act, see section 42-7,105.
Uniform Interstate Family Support Act, see section 42-701.

43-2926 State Court Administrator; create information sheet; contents; parenting plan mediation; distribution of information sheet. The State Court Administrator shall

create an information sheet for parties in a proceeding in which parenting functions for a child are at issue under the Parenting Act that includes information regarding parenting plans, child custody, parenting time, visitation, and other access and that informs the parties that they are required to attend a basic level parenting education course. The information sheet shall also state (1) that the parties have the right to agree to a parenting plan arrangement, (2) that before July 1, 2010, if they do not agree, they may be required, and on and after July 1, 2010, if they do not agree, they shall be required to participate in parenting plan mediation, and (3) that if mediation does not result in an agreement, the court will be required to create a parenting plan. The information sheet shall also provide information on how to obtain assistance in resolving a custody case, including, but not limited to, information on finding an attorney, information on accessing court-based self-help services if they are available, information about domestic violence service agencies, information about mediation, and information regarding other sources of assistance in developing a parenting plan. The State Court Administrator shall adopt this information sheet as a statewide form and take reasonable steps to ensure that it is distributed statewide and made available to parties in parenting function matters.

Source: Laws 2007, LB554, § 7.
Operative date January 1, 2008.

43-2927 Training; screening guidelines and safety procedures; State Court Administrator's office; duties. (1) Judges, attorneys, court-appointed attorneys, court-appointed guardians, and mediators involved in proceedings under the Parenting Act shall participate in training approved by the State Court Administrator to recognize child abuse or neglect, domestic intimate partner abuse, and unresolved parental conflict and its potential impact upon children and families.

(2) Screening guidelines and safety procedures for cases involving conditions identified in subsection (1) of section 43-2939 shall be devised by the State Court Administrator. Such screening shall be conducted by mediators using State Court Administrator-approved screening tools.

(3) Such screening shall be conducted as a part of the individual initial screening session for each case referred to mediation under the Parenting Act prior to setting the case for mediation to determine whether or not it is appropriate to proceed in mediation or to proceed in a form of specialized alternative dispute resolution.

(4) Screening for domestic intimate partner abuse shall be conducted by each attorney representing a party or child in any proceeding under the act to determine the existence of domestic intimate partner abuse or other issues in regard to coercion, intimidation, and barriers to safety and full and informed decisionmaking.

(5) The State Court Administrator's office, in collaboration with professionals in the fields of domestic abuse services, child and family services, mediation, and law, shall develop and approve curricula for the training required under subsection (1) of this section, as well as develop and approve rules, procedures, and forms for training and screening for child abuse or neglect, domestic intimate partner abuse, and unresolved parental conflict.

Source: Laws 2007, LB554, § 8.
Operative date January 1, 2008.

43-2928 Attendance at basic level parenting education course; delay or waiver; second-level parenting education course; child of divorce education course; State Court Administrator; duties; costs.

(1) The court shall order all parties to a proceeding under the Parenting Act to attend a basic level parenting education course. Participation in the course may be delayed or waived by the court for good cause shown. Failure or refusal by any party to participate in such a course as ordered by the court shall not delay the entry of a final judgment or an order modifying a final judgment in such action by more than six months and shall in no case be punished by incarceration.

(2) The court may order parties under the act to attend a second-level parenting education course subsequent to completion of the basic level course when screening or a factual determination of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict has been identified.

(3) The court may order a child of parties to a proceeding under the act to attend a child of divorce education course which may include, but is not limited to, information about adjustment of a child to parental separation, family and emotional well-being, conflict management, problem solving, and resiliency skills.

(4) The State Court Administrator shall approve all parenting and child of divorce education courses under the act.

(5) The basic level parenting education course pursuant to this section shall be designed to educate the parties about the impact of the pending court action upon the child and appropriate application of parenting functions. The course shall include, but not be limited to, information on the developmental stages of children, adjustment of a child to parental separation, the litigation and court process, alternative dispute resolution, conflict management, stress reduction, guidelines for parenting time, visitation, or other access, provisions for safety and transition plans, and information about parents and children affected by child abuse or neglect, domestic intimate partner abuse, and unresolved parental conflict.

(6) The second-level parenting education course pursuant to this section shall include, but not be limited to, information about development of provisions for safety and transition plans, the potentially harmful impact of domestic intimate partner abuse and unresolved parental conflict on the child, use of effective communication techniques and protocols, resource and referral information for victim and perpetrator services, batterer intervention programs, and referrals for mental health services, substance abuse services, and other community resources.

(7) Each party shall be responsible for the costs, if any, of attending any court-ordered parenting or child of divorce education course. The court may waive or specifically allocate costs between the parties for their required participation in the course. At the request of any party, or based upon screening or recommendation of a mediator, the parties shall be allowed to attend separate courses or to attend the same course at different times, particularly if child

abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict is or has been present in the relationship or one party has threatened the other party.

Source: Laws 2007, LB554, § 9.
Operative date January 1, 2008.

43-2929 Parenting plan; developed; approved by court; contents. (1) In any proceeding in which parenting functions for a child are at issue under Chapter 42, a parenting plan shall be developed and shall be approved by the court. Court rule may provide for the parenting plan to be developed by the parties or their counsel, a court conciliation program, an approved mediation center, or a private mediator. When a parenting plan has not been developed and submitted to the court, the court shall create the parenting plan in accordance with the Parenting Act. A parenting plan shall serve the best interests of the child pursuant to sections 42-364 and 43-2923 and shall:

(a) Assist in developing a restructured family that serves the best interests of the child by accomplishing the parenting functions; and

(b) Include, but not be limited to, determinations of the following:

(i) Legal custody and physical custody of each child;

(ii) Apportionment of parenting time, visitation, or other access for each child, including, but not limited to, specified religious and secular holidays, birthdays, Mother's Day, Father's Day, school and family vacations, and other special occasions, specifying dates and times for the same, or a formula or method for determining such a schedule in sufficient detail that, if necessary, the schedule can be enforced in subsequent proceedings by the court, and set out appropriate times and numbers for telephone access;

(iii) Location of the child during the week, weekend, and given days during the year;

(iv) A transition plan, including the time and places for transfer of the child, method of communication or amount and type of contact between the parties during transfers, and duties related to transportation of the child during transfers;

(v) Procedures for making decisions regarding the day-to-day care and control of the child consistent with the major decisions made by the person or persons who have legal custody and responsibility for parenting functions;

(vi) Provisions for a remediation process regarding future modifications to such plan;

(vii) Arrangements to maximize the safety of all parties and the child; and

(viii) Provisions for safety when a preponderance of the evidence establishes child abuse or neglect, domestic intimate partner abuse, unresolved parental conflict, or criminal activity which is directly harmful to a child.

(2) A parenting plan shall require that a party provide notification if the party plans to change the residence of the child for more than thirty days and the change would affect any other party's custody, parenting time, visitation, or other access. The notice shall be given before the contemplated move, by mail, return receipt requested, postage prepaid, to the last-known address of the party to be notified; except that the address or return address shall only include the county and state for a party who is living or moving to an undisclosed location because of safety concerns. A copy of the notice shall also be sent to the affected party's counsel of

record. To the extent feasible, the notice shall be provided within a minimum of forty-five days before the proposed change of residence so as to allow time for mediation of a new agreement concerning custody, parenting time, visitation, or other access.

(3) When safe and appropriate for the best interests of the child, the parenting plan may encourage mutual discussion of major decisions regarding parenting functions including the child's education, health care, and spiritual or religious upbringing. However, when a prior factual determination of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict has been made, then consideration shall be given to inclusion of provisions for safety and a transition plan that restrict communication or the amount and type of contact between the parties during transfers.

(4) Regardless of the custody determinations in the parenting plan, unless parental rights are terminated, both parents shall continue to have the rights stated in section 42-381.

(5) The parenting plan shall be accompanied by a financial plan which shall provide for apportionment of the expenses for medical support, including provisions for medical, dental, and eye care, medical reimbursements, day care, extracurricular activity, education, and other extraordinary expenses of the child and calculation of child support obligations.

(6) In the development of a parenting plan, consideration shall be given to the child's age, the child's developmental needs, and the child's perspective, as well as consideration of enhancing healthy relationships between the child and each party.

Source: Laws 2007, LB554, § 10.
Operative date January 1, 2008.

43-2930 Child information affidavit; when required; filing and service; contents; hearing; temporary parenting order; contents; form; temporary support. (1) Every party seeking a temporary order relating to parenting functions or custody, parenting time, visitation, or other access shall file and serve a child information affidavit. The child information affidavit shall be verified to the extent known or reasonably discoverable by the filing party or parties and shall state, at a minimum, the following:

(a) The name, address, and length of residence with any adults with whom each child has lived for the preceding twelve months; except that the address shall only include the county and state for a parent who is living in an undisclosed location because of safety concerns;

(b) The performance by each parent or person acting as parent for the preceding twelve months of the parenting functions relating to the daily needs of the child;

(c) A description of the work and child care schedules for the preceding twelve months of any person seeking custody, parenting time, visitation, or other access and any expected changes to these schedules in the near future;

(d) A description of the current proposed work and child care schedules;

(e) A description of the child's school and extracurricular activities, including who is responsible for transportation of the child; and

(f) Any circumstances of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict that are likely to pose a risk to the child and that warrant limitation on the award of temporary custody, parenting time, visitation, or other access to the child pending entry of a permanent parenting plan, including any restraining orders, protection orders, or criminal no-contact orders against either parent or a person acting as a parent by case number and jurisdiction.

(2) After a hearing, the court shall enter a temporary parenting order that includes:

(a) Provision for temporary legal custody;

(b) Provisions for temporary physical custody, which shall include either:

(i) A parenting time, visitation, or other access schedule that designates in which home each child will reside on given days of the year; or

(ii) A formula or method for determining such a schedule in sufficient detail that, if necessary, the schedule can be enforced in subsequent proceedings by the court;

(c) Designation of a temporary residence for the child; and

(d) Reference to any existing restraining orders, protection orders, or criminal no-contact orders as well as provisions for safety and a transition plan, consistent with any court's finding of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict in order to provide for the safety of a child and custodial parent necessary for the best interests of the child.

(3) A party may move for an order to show cause, and the court may enter a modified temporary parenting order.

(4) The State Court Administrator's office shall create a form for parties to file a child information affidavit setting forth the elements identified in this section.

(5) Provisions for temporary support for the child and other financial matters may be included in the temporary parenting order.

Source: Laws 2007, LB554, § 11.
Operative date January 1, 2008.

43-2931 Final child information affidavit; when required; filing and service; contents; form. (1) Every party seeking a final judicial allocation of parenting functions, including custody, parenting time, visitation, or other access under the Parenting Act, shall file and serve a final child information affidavit with the court. The child information affidavit shall be verified and, to the extent known or reasonably discoverable by the filing party or parties, shall state at a minimum the following:

(a) The name, address, and length of residence of any adults with whom any child has lived for one year or more, or in the case of a child less than one year old, any adults with whom the child has lived since the child's birth; except that the address shall include only the county and state for an adult who is living in an undisclosed location because of safety concerns;

(b) The name and address of each of the child's parents and any other individuals with standing to participate in the proceeding; except that the address shall only include the county and state for a parent who is living in an undisclosed location because of safety concerns;

(c) A description of the allocation of parenting functions relating to the daily needs of the child performed by each person named in subdivisions (1)(a) and (b) of this section during the twenty-four months preceding the filing of the action;

(d) A description of the work and child-care schedules of any person seeking custody, parenting time, visitation, or other access and any expected changes to these schedules in the near future;

(e) A description of the child's school and extracurricular activities, including who is responsible for transportation of the child;

(f) Any circumstances of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict that are likely to pose a risk to the child and that warrant limitation on the award to any person seeking custody, parenting time, visitation, or other access, including any restraining orders, protection orders, or criminal no-contact orders against either parent or person acting as parent by case number and jurisdiction; and

(g) A description of the known areas of agreement and disagreement regarding custody, parenting time, visitation, or other access.

(2) The State Court Administrator's office shall create a form for parties to file a final child information affidavit setting forth the elements identified in this section.

Source: Laws 2007, LB554, § 12.
Operative date January 1, 2008.

43-2932 Development of parenting plan; limitations to protect child or child's parent from harm; effect of court determination; burden of proof. (1) In developing a parenting plan:

(a) If any party requests, or if a preponderance of the evidence demonstrates, the court shall determine whether a parent who would otherwise be allocated custody, parenting time, visitation, or other access to the child under a parenting plan:

(i) Has committed child abuse or neglect;

(ii) Has committed child abandonment under section 28-705;

(iii) Has committed domestic intimate partner abuse; or

(iv) Has interfered persistently with the other parent's access to the child, except in the case of actions taken for the purpose of protecting the safety of the child or the interfering parent or another family member, pending adjudication of the facts underlying that belief; and

(b) If a parent is found to have engaged in any activity specified by subdivision (1)(a) of this section, limits shall be imposed that are reasonably calculated to protect the child or child's parent from harm. The limitations may include, but are not limited to:

(i) An adjustment of the custody of the child, including the allocation of sole legal custody or physical custody to one parent;

(ii) Supervision of the parenting time, visitation, or other access between a parent and the child;

(iii) Exchange of the child between parents through an intermediary or in a protected setting;

(iv) Restraints on the parent from communication with or proximity to the other parent or the child;

(v) A requirement that the parent abstain from possession or consumption of alcohol or nonprescribed drugs while exercising custodial responsibility and in a prescribed period immediately preceding such exercise;

(vi) Denial of overnight physical custodial responsibility;

(vii) Restrictions on the presence of specific persons while the parent is with the child;

(viii) A requirement that the parent post a bond to secure return of the child following a period in which the parent is exercising physical custodial responsibility or to secure other performance required by the court;

(ix) A requirement that the parent complete a program of intervention for perpetrators of domestic violence, a program for drug or alcohol abuse, or a program designed to correct another factor; or

(x) Any other constraints or conditions deemed necessary to provide for the safety of the child, a child's parent, or any person whose safety immediately affects the child's welfare.

(2) A court determination under this section shall not be considered a report for purposes of inclusion in the central register of child protection cases pursuant to the Child Protection Act.

(3) If a parent is found to have engaged in any activity specified in subsection (1) of this section, the court shall not order legal or physical custody to be given to that parent without making special written findings that the child and other parent can be adequately protected from harm by such limits as it may impose under such subsection. The parent found to have engaged in the behavior specified in subsection (1) of this section has the burden of proving that legal or physical custody, parenting time, visitation, or other access to that parent will not endanger the child or the other parent.

Source: Laws 2007, LB554, § 13.
Operative date January 1, 2008.

Cross Reference

Child Protection Act, see section 28-710.

43-2933 Registered sex offender; other criminal convictions; limitation on or denial of custody or access to child; presumption; modification of previous order. (1)(a) No person shall be granted custody of, or unsupervised parenting time, visitation, or other access with, a child if the person is required to be registered as a sex offender under the Sex Offender Registration Act for an offense that would make it contrary to the best interests of the child for such access or for an offense in which the victim was a minor or if the person has been convicted under section 28-311, 28-319.01, 28-320, 28-320.01, or 28-320.02, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

(b) No person shall be granted custody of, or unsupervised parenting time, visitation, or other access with, a child if anyone residing in the person's household is required to register as a sex offender under the Sex Offender Registration Act as a result of a felony conviction

in which the victim was a minor or for an offense that would make it contrary to the best interests of the child for such access unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

(c) The fact that a child is permitted unsupervised contact with a person who is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender under the Sex Offender Registration Act shall be prima facie evidence that the child is at significant risk. When making a determination regarding significant risk to the child, the prima facie evidence shall constitute a presumption affecting the burden of producing evidence. However, this presumption shall not apply if there are factors mitigating against its application, including whether the other party seeking custody, parenting time, visitation, or other access is also required, as the result of a felony conviction in which the victim was a minor, to register as a sex offender under the Sex Offender Registration Act.

(2) No person shall be granted custody, parenting time, visitation, or other access with a child if the person has been convicted under section 28-319 and the child was conceived as a result of that violation.

(3) A change in circumstances relating to subsection (1) or (2) of this section is sufficient grounds for modification of a previous order.

Source: Laws 2007, LB554, § 14.
Operative date January 1, 2008.

Cross Reference

Sex Offender Registration Act, see section 29-4001.

43-2934 Restraining order, protection order, or criminal no-contact order; effect; court findings. (1) The court shall not make a custody, parenting time, visitation, or other access order and the parenting plan shall not require anything that is inconsistent with any restraining order, protection order, or criminal no-contact order regarding any party to the proceeding, unless the court finds that:

(a) The custody, parenting time, visitation, or other access order cannot be made consistent with the restraining order, protection order, or criminal no-contact order; and

(b) The custody, parenting time, visitation, or other access order is in the best interests of the minor.

(2) Whenever custody, parenting time, visitation, or other access is granted to a parent in a case in which domestic intimate partner abuse is alleged and a restraining order, protection order, or criminal no-contact order has been issued, the custody, parenting time, visitation, or other access order shall specify the time, day, place, and manner of transfer of the child for custody, parenting time, visitation, or other access to limit the child's exposure to potential domestic conflict or violence and to ensure the safety of all family members. If the court finds that a party is staying in a place designated as a shelter for victims of domestic abuse or other confidential location, the time, day, place, and manner of transfer of the child for

custody, parenting time, visitation, or other access shall be designed to prevent disclosure of the location of the shelter or other confidential location.

(3) When making an order or parenting plan for custody, parenting time, visitation, or other access in a case in which domestic abuse is alleged and a restraining order, protection order, or criminal no-contact order has been issued, the court shall consider whether the best interests of the child, based upon the circumstances of the case, require that any custody, parenting time, visitation, or other access arrangement be limited to situations in which a third person, specified by the court, is present, or whether custody, parenting time, visitation, or other access should be suspended or denied.

Source: Laws 2007, LB554, § 15.
Operative date January 1, 2008.

43-2935 Hearing; parenting plan; modification; court powers. After a hearing on the record, the court shall determine whether the submitted parenting plan meets all of the requirements of the Parenting Act and is in the best interests of the child. If the parenting plan lacks any of the elements required by the act or is not in the child's best interests, the court shall modify and approve the parenting plan as modified, reject the parenting plan and order the parties to develop a new parenting plan, or reject the parenting plan and create a parenting plan that meets all the required elements and is in the best interests of the child. The court may include in the parenting plan:

(1) A provision for resolution of disputes that arise under the parenting plan, including provisions for suspension of parenting time, visitation, and other access when new findings of child abuse or neglect, domestic intimate partner abuse, criminal activity affecting the best interests of a child, or the violation of a protection order, restraining order, or criminal no-contact order occur, until a modified custody order or parenting plan with provisions for safety or a transition plan, or both, is in place; and

(2) Consequences for failure to follow parenting plan provisions.

Source: Laws 2007, LB554, § 16.
Operative date January 1, 2008.

43-2936 Referral to mediation, specialized alternative dispute resolution, or other alternative dispute resolution process; information provided to parties. An individual party, a party's attorney, a guardian ad litem, a social service agency, a court, an entity providing domestic violence services, or another interested entity may refer a custody, parenting time, visitation, other access, or related matter to mediation, specialized alternative dispute resolution, or other alternative dispute resolution process at any time prior to the filing or after the filing of an action with a court. Upon receipt of such referral, each mediator, court conciliation program, or approved mediation center shall provide information about mediation and specialized alternative dispute resolution to each party.

Source: Laws 2007, LB554, § 17.
Operative date January 1, 2008.

43-2937 Court referral to mediation or specialized alternative dispute resolution; temporary relief; specialized alternative dispute resolution rule; approval; mandatory court order; when. (1) At any time in the proceedings, a court may refer a case to mediation or specialized alternative dispute resolution in order to attempt resolution of any relevant matter. The court may state a date for the case to return to court, and the court shall not grant an extension of such date except for cause. If the court refers a case to mediation or specialized alternative dispute resolution, the court may, if appropriate, order temporary relief, including necessary support and provision for payment of mediation costs. Court referral shall be to an approved mediation center or a court conciliation program.

(2) Prior to July 1, 2010, if there are allegations of domestic intimate partner abuse or unresolved parental conflict between the parties in any proceeding, mediation shall not be required pursuant to the Parenting Act or by local court rule, unless the court has established a specialized alternative dispute resolution rule approved by the State Court Administrator. The specialized alternative dispute resolution process shall include a method for court consideration of precluding or disqualifying parties from participating; provide an opportunity to educate both parties about the process; require informed consent from both parties in order to proceed; provide safety protocols, including separate individual sessions for each participant, informing each party about the process, and obtaining informed consent from each party to continue the process; allow support persons to attend sessions; and establish opt-out-for-cause provisions. On and after July 1, 2010, all trial courts shall have a mediation and specialized alternative dispute resolution rule in accordance with the act.

(3) On and after July 1, 2010, all parties who have not submitted a parenting plan to the court within the time specified by the court shall be ordered to participate in mediation or specialized alternative dispute resolution at a court conciliation program or an approved mediation center as provided in section 43-2939.

Source: Laws 2007, LB554, § 18.
Operative date January 1, 2008.

43-2938 Mediator; qualifications; training; approved specialized mediator; requirements. (1) A mediator under the Parenting Act may be a court conciliation program counselor, a court conciliation program mediator, an approved mediation center affiliated mediator, or a mediator in private practice.

(2) To qualify as a Parenting Act mediator, a person shall have basic mediation training and family mediation training, approved by the Office of Dispute Resolution, and shall have served as an apprentice to a mediator as defined in section 25-2903. The training shall include, but not be limited to:

(a) Knowledge of the court system and procedures used in contested family matters;

(b) General knowledge of family law, especially regarding custody, parenting time, visitation, and other access, and support, including calculation of child support using the child support guidelines pursuant to section 42-364.16;

(c) Knowledge of other resources in the state to which parties and children can be referred for assistance;

(d) General knowledge of child development, the potential effects of dissolution or parental separation upon children, parents, and extended families, and the psychology of families;

(e) Knowledge of child abuse or neglect and domestic intimate partner abuse and their potential impact upon the safety of family members, including knowledge of provisions for safety, transition plans, domestic intimate partner abuse screening protocols, and mediation safety measures; and

(f) Knowledge in regard to the potential effects of domestic violence on a child; the nature and extent of domestic intimate partner abuse; the social and family dynamics of domestic intimate partner abuse; techniques for identifying and assisting families affected by domestic intimate partner abuse; interviewing, documentation of, and appropriate recommendations for families affected by domestic intimate partner abuse; and availability of community and legal domestic violence resources.

(3) To qualify as an approved specialized mediator for parents involved in high conflict and situations in which abuse is present, the mediator shall apply to an approved mediation center or court conciliation program for consideration to be listed as an approved specialized mediator. The approved mediation center or court conciliation program shall submit its list of approved specialized mediators to the Office of Dispute Resolution on an annual basis. Minimum requirements to be listed as an approved specialized mediator include:

(a) Affiliation with a court conciliation program or an approved mediation center;

(b) Meeting the minimum standards for a Parenting Act mediator under this section;

(c) Meeting additional relevant standards and qualifications as determined by the State Court Administrator; and

(d) Satisfactorily completing an additional minimum twenty-four-hour specialized alternative dispute resolution domestic mediation training course developed by entities providing domestic abuse services and mediation services for children and families and approved by the State Court Administrator. This course shall include advanced education in regard to the potential effects of domestic violence on the child; the nature and extent of domestic intimate partner abuse; the social and family dynamics of domestic intimate partner abuse; techniques for identifying and assisting families affected by domestic intimate partner abuse; and appropriate and safe mediation strategies to assist parties in developing a parenting plan, provisions for safety, and a transition plan, as necessary and relevant.

Source: Laws 2007, LB554, § 19.
Operative date January 1, 2008.

43-2939 Parenting Act mediator; duties; conflict of interest; report of child abuse or neglect; termination of mediation. (1) A Parenting Act mediator, prior to meeting with the parties in an initial mediation session, shall provide an individual initial screening session with each party to assess the presence of child abuse or neglect, unresolved parental conflict, domestic intimate partner abuse, other forms of intimidation or coercion, or a party's inability to negotiate freely and make informed decisions. If any of these conditions exist, the mediator

shall not proceed with the mediation session but shall proceed with a specialized alternative dispute resolution process that addresses safety measures for the parties, if the mediator is on the approved specialized list of an approved mediation center or court conciliation program, or shall refer the parties to a mediator who is so qualified. When public records such as current or expired protection orders, criminal domestic violence cases, and child abuse or neglect proceedings are provided to a mediator, such records shall be considered during the individual initial screening session to determine appropriate dispute resolution methods. The mediator has the duty to determine whether to proceed in joint session, individual sessions, or caucus meetings with the parties in order to address safety and freedom to negotiate. In any mediation or specialized alternative dispute resolution, a mediator has the ongoing duty to assess appropriateness of the process and safety of the process upon the parties.

(2) No mediator who represents or has represented one or both of the parties or has had either of the parties as a client as an attorney or a counselor shall mediate the case, unless such services have been provided to both participants and mediation shall not proceed in such cases unless the prior relationship has been disclosed, the role of the mediator has been made distinct from the earlier relationship, and the participants have been given the opportunity to fully choose to proceed. All other potential conflicts of interest shall be disclosed and discussed before the parties decide whether to proceed with that mediator.

(3) No mediator who is also a licensed attorney may, after completion of the mediation process, represent either party in the role of attorney in the same matter through subsequent legal proceedings.

(4) The mediator shall facilitate the mediation process. Prior to the commencement of mediation, the mediator shall notify the parties that, if the mediator has reasonable cause to believe that a child has been subjected to child abuse or neglect or if the mediator observes a child being subjected to conditions or circumstances which reasonably would result in child abuse or neglect, the mediator is obligated under section 28-711 to report such information to the authorized child abuse and neglect reporting agency and shall report such information unless the information has been previously reported. The mediator shall have access to court files for purposes of mediation under the Parenting Act. The mediator shall be impartial and shall use his or her best efforts to effect an agreement or parenting plan as required under the act. The mediator may interview the child if, in the mediator's opinion, such an interview is necessary or appropriate. The parties shall not bring the child to any sessions with the mediator unless specific arrangements have been made with the mediator in advance of the session. The mediator shall assist the parties in assessing their needs and the best interests of the child involved in the proceeding and may include other persons in the mediation process as necessary or appropriate. The mediator shall advise the parties that they should consult with an attorney.

(5) The mediator may terminate mediation if one or more of the following conditions exist:

(a) There is no reasonable possibility that mediation will promote the development of an effective parenting plan;

(b) Allegations are made of direct physical or significant emotional harm to a party or to a child that have not been heard and ruled upon by the court; or

(c) Mediation will otherwise fail to serve the best interests of the child.

(6) Until July 1, 2010, either party may terminate mediation at any point in the process. On and after July 1, 2010, a party may not terminate mediation until after an individual initial screening session and one mediation or specialized alternative dispute resolution session are held. The session after the individual initial screening session shall be an individual specialized alternative dispute resolution session if the screening indicated the existence of any condition specified in subsection (1) of this section.

Source: Laws 2007, LB554, § 20.
Operative date January 1, 2008.

43-2940 Mediation; uniform standards of practice; State Court Administrator; duties; mediation conducted in private. (1) Mediation of cases under the Parenting Act shall be governed by uniform standards of practice adopted by the State Court Administrator. In adopting the standards of practice, the State Court Administrator shall consider standards developed by recognized associations of mediators and attorneys and other relevant standards governing mediation and other dispute resolution processes of proceedings for the determination of parenting plans or dissolution of marriage. The standards of practice shall include, but not be limited to, all of the following:

(a) Provision for the best interests of the child and the safeguarding of the rights of the child in regard to each parent, consistent with the act;

(b) Facilitation of the transition of the family by detailing factors to be considered in decisions concerning the child's future;

(c) The conducting of negotiations in such a way as to address the relationships between the parties, considering safety and the ability to freely negotiate and make decisions; and

(d) Provision for a specialized alternative dispute resolution process in cases where any of the conditions specified in subsection (1) of section 43-2939 exist.

(2) Mediation under the Parenting Act shall be conducted in private.

Source: Laws 2007, LB554, § 21.
Operative date January 1, 2008.

43-2941 Mediation subject to other laws; claim of privilege; disclosures authorized. Mediation of a parenting plan shall be subject to the Uniform Mediation Act and the Dispute Resolution Act, to the extent such acts are not in conflict with the Parenting Act. Unsigned mediated agreements under the Parenting Act are not subject to a claim of privilege under subdivision (a)(1) of section 25-2935. In addition to disclosures permitted in section 25-2936, a mediator under the Parenting Act may also disclose a party's failure to schedule an individual initial screening session or a mediation session.

Source: Laws 2007, LB554, § 22.
Operative date January 1, 2008.

Cross Reference

Dispute Resolution Act, see section 25-2901.
Uniform Mediation Act, see section 25-2930.

43-2942 Costs. The costs of the mediation process shall be paid by the parties. If the court orders the parties to mediation, the costs to the parties shall be charged according to a sliding fee scale as established by the State Court Administrator.

Source: Laws 2007, LB554, § 23.
 Operative date January 1, 2008.

43-2943 Rules; Parenting Act Fund; created; use; investment. (1) The State Court Administrator shall develop rules to implement the Parenting Act.

(2) The Parenting Act Fund is created. The State Court Administrator, through the Office of Dispute Resolution, approved mediation centers, and court conciliation programs, shall use the fund to carry out the Parenting Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2007, LB554, § 24.
 Operative date January 1, 2008.

Cross Reference

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 33

SUPPORT ENFORCEMENT

(a) LICENSE SUSPENSION ACT

Section.

- 43-3305.01. Department, defined.
- 43-3314. Delinquent or past-due support; notice to license holder; contents.
- 43-3317. License holder; appeal of administrative decision; procedure.
- 43-3318. Certification to relevant licensing authorities; when; procedure; effect.
- 43-3319. License holder; motion or application to modify support order; effect.
- 43-3320. License holder; written confirmation of compliance.
- 43-3323. Rules and regulations.
- 43-3325. Act; how construed.
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(b) ACCESS TO INFORMATION

- 43-3327. Support orders and genetic testing; access to information without court or administrative order; fee authorized; confidentiality; violation; penalty.

(c) BANK MATCH SYSTEM

- 43-3329. Terms, defined.
- 43-3333. Seizure of obligor's property; notice of arrearage; contents; appeal.
- 43-3334. Order to withhold and deliver; when; contents; payor; duties; fee.
- 43-3335. Order to withhold and deliver; notice to obligor; contents; appeal.
- 43-3336. Order to withhold and deliver; co-owner; notice; contents; appeal.
- 43-3338. Judicial review.

(e) STATE DISBURSEMENT UNIT

- 43-3342.01. State Disbursement Unit; Title IV-D Division; duties; records.
- 43-3342.04. Title IV-D Division; establish Customer Service Unit; duties; report.

(a) LICENSE SUSPENSION ACT

43-3305.01 Department, defined. Department means the Department of Health and Human Services.

Source: Laws 1999, LB 594, § 29; Laws 2007, LB296, § 153.
Operative date July 1, 2007.

43-3314 Delinquent or past-due support; notice to license holder; contents. (1) When the department or a county attorney or authorized attorney has made reasonable efforts to verify and has reason to believe that a license holder in a case receiving services under Title IV-D of the Social Security Act, as amended, (a) is delinquent on a support order in an amount equal to the support due and payable for more than a three-month period of time, (b) is not in compliance with a payment plan for amounts due as determined by a county attorney, an authorized attorney, or the department for such past-due support, or (c) is not in compliance with a payment plan for amounts due under a support order pursuant to a court order for such past-due support, and therefor determines to certify the license holder to the appropriate licensing authority, the department, county attorney, or authorized attorney shall send written notice to the license holder by certified mail to the last-known address of the license holder or to the last-known address of the license holder available to the court pursuant to section 42-364.13. For purposes of this section, reasonable efforts to verify means reviewing the case file and having written or oral communication with the clerk of the court of competent jurisdiction and with the license holder. Reasonable efforts to verify may also include written or oral communication with custodial parents.

(2) The notice shall specify:

(a) That the Department of Health and Human Services, county attorney, or authorized attorney intends to certify the license holder to the Department of Motor Vehicles and to relevant licensing authorities pursuant to subsection (3) of section 43-3318 as a license holder described in subsection (1) of this section;

(b) The court or agency of competent jurisdiction which issued the support order or in which the support order is registered;

(c) That an enforcement action for a support order will incorporate any amount delinquent under the support order which may accrue in the future;

(d) That a license holder who is in violation of a support order can come into compliance by:

(i) Paying current support if a current support obligation exists; and

(ii) Paying all past-due support or, if unable to pay all past-due support and if a payment plan for such past-due support has not been determined, by making payments in accordance with a payment plan determined by the county attorney, the authorized attorney, or the Department of Health and Human Services for such past-due support; and

(e) That within thirty days after issuance of the notice, the license holder may either:

(i) Request administrative review in the manner specified in the notice to contest a mistake of fact. Mistake of fact means an error in the identity of the license holder or an error in the determination of whether the license holder is a license holder described in subsection (1) of this section; or

(ii) Seek judicial review by filing a petition in the court of competent jurisdiction of the county where the support order was issued or registered or, in the case of a foreign support order not registered in Nebraska, the court of competent jurisdiction of the county where the child resides if the child resides in Nebraska or the court of competent jurisdiction of the county where the license holder resides if the child does not reside in Nebraska.

Source: Laws 1997, LB 752, § 14; Laws 1999, LB 594, § 30; Laws 2007, LB296, § 154.
Operative date July 1, 2007.

43-3317 License holder; appeal of administrative decision; procedure. Any person aggrieved by a decision of the department pursuant to section 43-3316 may, upon exhaustion of the procedures for administrative review provided under the Administrative Procedure Act, seek judicial review within ten days after the issuance of notice of the department's decision pursuant to section 43-3316. Notwithstanding subdivision (2)(a) of section 84-917, proceedings for review shall be instituted by filing a petition in the court of competent jurisdiction of the county where the support order was issued or registered or, in the case of a foreign support order not registered in Nebraska, the court of competent jurisdiction as specified in subdivision (2)(e)(ii) of section 43-3314.

Source: Laws 1997, LB 752, § 17; Laws 2007, LB296, § 155.
Operative date July 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

43-3318 Certification to relevant licensing authorities; when; procedure; effect. (1) The Department of Health and Human Services, county attorney, authorized attorney, or court of competent jurisdiction may certify in writing to the Department of Motor Vehicles, relevant licensing authorities, and, if the license holder is a member of the Nebraska

State Bar Association, the Counsel for Discipline of the Nebraska Supreme Court, that a license holder is a license holder described in subsection (1) of section 43-3314 if:

(a) The license holder does not timely request either administrative review or judicial review upon issuance of a notice under subsection (2) of section 43-3314, is still a license holder described in subsection (1) of section 43-3314 thirty-one days after issuance of the notice, and does not obtain a written confirmation of compliance from the Department of Health and Human Services, county attorney, or authorized attorney pursuant to section 43-3320 within thirty-one days after issuance of the notice;

(b) The Department of Health and Human Services issues a decision after a hearing that finds the license holder is a license holder described in subsection (1) of section 43-3314, the license holder is still a license holder described in such subsection thirty-one days after issuance of that decision, and the license holder does not seek judicial review of the decision within the ten-day appeal period provided in section 43-3317; or

(c) The court of competent jurisdiction enters a judgment on a petition for judicial review, initiated under either section 43-3315 or 43-3317, that finds the license holder is a license holder described in subsection (1) of section 43-3314.

(2) The court of competent jurisdiction, after providing appropriate notice, may certify a license holder to the Department of Motor Vehicles and relevant licensing authorities if a license holder has failed to comply with subpoenas or warrants relating to paternity or child support proceedings.

(3) If the Department of Health and Human Services, county attorney, authorized attorney, or court of competent jurisdiction determines to certify a license holder to the appropriate licensing authority, then the department, county attorney, authorized attorney, or court of competent jurisdiction shall certify a license holder in the following order and in compliance with the following restrictions:

(a) To the Department of Motor Vehicles to suspend the license holder's operator's license, except the Department of Motor Vehicles shall not suspend the license holder's commercial driver's license or restricted commercial driver's license. If a license holder possesses a commercial driver's license or restricted commercial driver's license, the Department of Health and Human Services, county attorney, authorized attorney, or court of competent jurisdiction shall certify such license holder pursuant to subdivision (b) of this subsection. If the license holder fails to come into compliance with the support order as provided in section 43-3314 or with subpoenas and warrants relating to paternity or child support proceedings within ten working days after the date on which the license holder's operator's license suspension becomes effective, then the department, county attorney, authorized attorney, or court of competent jurisdiction may certify the license holder pursuant to subdivision (b) of this subsection without further notice;

(b) To the relevant licensing authority to suspend the license holder's recreational license once the Game and Parks Commission has operative the electronic or other automated retrieval system necessary to suspend recreational licenses. If the license holder does not have a recreational license and until the Game and Parks Commission has operative the

electronic or other automated retrieval system necessary to suspend recreational licenses, the department, county attorney, authorized attorney, or court of competent jurisdiction may certify the license holder pursuant to subdivision (c) of this subsection. If the license holder fails to come into compliance with the support order as provided in section 43-3314 or with subpoenas and warrants relating to paternity or child support proceedings within ten working days after the date on which the license holder's recreational license suspension becomes effective, the department, county attorney, authorized attorney, or court of competent jurisdiction may certify the license holder pursuant to subdivision (c) of this subsection without further notice; and

(c) To the relevant licensing authority to suspend the license holder's professional license, occupational license, commercial driver's license, or restricted commercial driver's license.

(4) If the Department of Health and Human Services, county attorney, authorized attorney, or court of competent jurisdiction certifies the license holder to the Department of Motor Vehicles, the Department of Motor Vehicles shall suspend the operator's license of the license holder ten working days after the date of certification. The Department of Motor Vehicles shall without undue delay notify the license holder by certified mail that the license holder's operator's license will be suspended and the date the suspension becomes effective. No person shall be issued an operator's license by the State of Nebraska if at the time of application for a license the person's operator's license is suspended under this section. Any person whose operator's license has been suspended shall return his or her license to the Department of Motor Vehicles within five working days after receiving the notice of the suspension. If any person fails to return the license, the Department of Motor Vehicles shall direct any peace officer to secure possession of the operator's license and to return it to the Department of Motor Vehicles. The peace officer who is directed to secure possession of the license shall make every reasonable effort to secure the license and return it to the Department of Motor Vehicles or shall show good cause why the license cannot be returned. An appeal of the suspension of an operator's license under this section shall be pursuant to section 60-4,105. A license holder whose operator's license has been suspended under this section may apply for an employment driving permit as provided by sections 60-4,129 and 60-4,130, except that the license holder is not required to fulfill the driver improvement or driver education and training course requirements of subsection (2) of section 60-4,130.

(5) Except as provided in subsection (6) of this section as it pertains to a license holder who is a member of the Nebraska State Bar Association, if the Department of Health and Human Services, county attorney, authorized attorney, or court of competent jurisdiction certifies the license holder to a relevant licensing authority, the relevant licensing authority, notwithstanding any other provision of law, shall suspend the license holder's professional, occupational, or recreational license and the license holder's right to renew the professional, occupational, or recreational license ten working days after the date of certification. The relevant licensing authority shall without undue delay notify the license holder by certified

mail that the license holder's professional, occupational, or recreational license will be suspended and the date the suspension becomes effective.

(6) If the department, county attorney, authorized attorney, or court of competent jurisdiction certifies a license holder who is a member of the Nebraska State Bar Association to the Counsel for Discipline of the Nebraska Supreme Court, the Nebraska Supreme Court may suspend the license holder's license to practice law. It is the intent of the Legislature to encourage all license holders to comply with their child support obligations. Therefore, the Legislature hereby requests that the Nebraska Supreme Court adopt amendments to the rules regulating attorneys, if necessary, which provide for the discipline of an attorney who is delinquent in the payment of or fails to pay his or her child support obligation.

(7) The Department of Health and Human Services, or court of competent jurisdiction when appropriate, shall send by certified mail to the license holder at the license holder's last-known address a copy of any certification filed with the Department of Motor Vehicles or a relevant licensing authority and a notice which states that the license holder's operator's license will be suspended ten working days after the date of certification and that the suspension of a professional, occupational, or recreational license pursuant to subsection (5) of this section becomes effective ten working days after the date of certification.

Source: Laws 1997, LB 752, § 18; Laws 1999, LB 594, § 31; Laws 2004, LB 1207, § 43; Laws 2007, LB296, § 156.
Operative date July 1, 2007.

43-3319 License holder; motion or application to modify support order; effect. If the license holder files a motion or application to modify a support order, the department, county attorney, or authorized attorney, upon notification by the license holder, shall stay the action to certify the license holder under section 43-3318 until disposition of the motion or application by the court or agency of competent jurisdiction. If the license holder requests review of the support order under section 43-512.12, the department shall stay the action to certify the license holder pending final disposition of the review and modification process.

Source: Laws 1997, LB 752, § 19; Laws 2007, LB296, § 157.
Operative date July 1, 2007.

43-3320 License holder; written confirmation of compliance. (1) When a license holder comes into compliance with the support order as provided in section 43-3314, the department, county attorney, or authorized attorney shall provide the license holder with written confirmation that the license holder is in compliance.

(2) When a license holder comes into compliance with subpoenas and warrants relating to paternity or child support proceedings, the court of competent jurisdiction shall provide the license holder with written confirmation that the license holder is in compliance.

Source: Laws 1997, LB 752, § 20; Laws 2007, LB296, § 158.
Operative date July 1, 2007.

43-3323 Rules and regulations. The department shall adopt and promulgate rules and regulations to carry out the License Suspension Act.

Source: Laws 1997, LB 752, § 23; Laws 2007, LB296, § 159.
Operative date July 1, 2007.

43-3325 Act; how construed. Nothing in the License Suspension Act shall prevent the department, the county attorney, the authorized attorney, or the court of competent jurisdiction from taking other enforcement actions.

Source: Laws 1997, LB 752, § 25; Laws 2007, LB296, § 160.
Operative date July 1, 2007.

43-3326 Reports to Legislature. The department shall issue a report to the Legislature on or before January 31 of each year which discloses the number of professional, occupational, or recreational licenses which were suspended and the number which were erroneously suspended and restored as a result of the License Suspension Act for the prior year. The Director of Motor Vehicles shall issue a report to the Legislature on or before January 31 of each year which discloses the number of operators' licenses which were suspended and the number which were erroneously suspended and restored as a result of the License Suspension Act for the prior year.

Source: Laws 1997, LB 752, § 26; Laws 1999, LB 594, § 32; Laws 2007, LB296, § 161.
Operative date July 1, 2007.

(b) ACCESS TO INFORMATION

43-3327 Support orders and genetic testing; access to information without court or administrative order; fee authorized; confidentiality; violation; penalty. (1) For purposes of this section:

- (a) Authorized attorney has the same meaning as in section 43-1704;
- (b) Department means the Department of Health and Human Services;
- (c) Genetic testing means genetic testing ordered pursuant to section 43-1414; and
- (d) Support order has the same meaning as in section 43-1717.

(2) Notwithstanding any other provision of law regarding the confidentiality of records, the department, a county attorney, or an authorized attorney may, without obtaining a court or administrative order:

(a) Compel by subpoena (i) information relevant to establishing, modifying, or enforcing a support order and (ii) genetic testing of an individual relevant to establishing, modifying, or enforcing a support order. Such information includes, but is not limited to, relevant financial records and other relevant records including the name, address, and listing of financial assets or liabilities from public or private entities. If a person fails or refuses to obey the subpoena, the department, a county attorney, or an authorized attorney may apply to a judge of the court of competent jurisdiction for an order directing such person to comply with the subpoena. Failure to obey such court order may be punished by the court as contempt of court; and

(b) Obtain access to information contained in the records, including automated data bases, of any state or local agency which is relevant to establishing, modifying, or enforcing a support

order or to ordering genetic testing. Such records include, but are not limited to, vital records, state and local tax and revenue records, titles to real and personal property, employment security records, records of correctional institutions, and records concerning the ownership and control of business entities.

(3) The department shall subpoena or access information as provided in subsection (2) of this section at the request of a state agency of another state which administers Title IV-D of the federal Social Security Act for such information. The department may charge a fee for this service which does not exceed the cost of providing the service.

(4) All information acquired pursuant to this section is confidential and cannot be disclosed or released except to other agencies which have a legitimate and official interest in the information for carrying out the purposes of this section. A person who receives such information, subject to the provisions of this subsection on confidentiality and restrictions on disclosure or release, is immune from any civil or criminal liability. A person who cooperates in good faith by providing information or records under this section is immune from any civil or criminal liability. Any person acquiring information pursuant to this section who discloses or releases such information in violation of this subsection is guilty of a Class III misdemeanor. The disclosure or release of such information regarding an individual is a separate offense from information disclosed or released regarding any other individual.

Source: Laws 1997, LB 752, § 27; Laws 1999, LB 594, § 33; Laws 2007, LB296, § 162.
Operative date July 1, 2007.

(c) BANK MATCH SYSTEM

43-3329 Terms, defined. For purposes of sections 43-3328 to 43-3339, the following definitions apply:

(1) Account means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money-market mutual fund account;

(2) Authorized attorney has the same meaning as found in section 43-1704;

(3) Child support has the same meaning as found in section 43-1705;

(4) Department means the Department of Health and Human Services and if the department designates, includes a county attorney or authorized attorney;

(5) Financial institution means every federal or state commercial or savings bank, including savings and loan associations and cooperative banks, federal or state chartered credit unions, benefit associations, insurance companies, safe deposit companies, any money-market mutual fund as defined in section 851(a) of the Internal Revenue Code that seeks to maintain a constant net asset value of one dollar in accordance with 17 C.F.R. 270.2a-7, any broker, brokerage firm, trust company, or unit investment trust, or any other similar entity doing business or authorized to do business in the State of Nebraska;

(6) Match means a comparison by automated or other means by name and social security number of a list of obligors provided to a financial institution by the department and a list of depositors of any financial institution;

(7) Medical support has the same meaning as found in section 43-512;

(8) Obligor means a person who owes a duty of support pursuant to a support order;

(9) Payor includes a person, partnership, limited partnership, limited liability partnership, limited liability company, corporation, or other entity doing business or authorized to do business in the State of Nebraska, including a financial institution, or a department or an agency of state, county, or city government;

(10) Spousal support has the same meaning as found in section 43-1715;

(11) Support in the definitions of child support, medical support, and spousal support means providing necessary shelter, food, clothing, care, medical support, medical attention, education expenses, or funeral expenses or any other reasonable and necessary expense; and

(12) Support order has the same meaning as found in section 43-1717.

Source: Laws 1997, LB 752, § 29; Laws 2003, LB 245, § 5; Laws 2007, LB296, § 163.
Operative date July 1, 2007.

43-3333 Seizure of obligor's property; notice of arrearage; contents; appeal. (1)

In a case which is receiving services under Title IV-D of the federal Social Security Act, as amended, when the department has made reasonable efforts to verify and has reason to believe payment on a support order is in arrears in an amount equal to the support due and payable for more than a three-month period of time or upon the request of the state agency of another state which administers Title IV-D of the federal Social Security Act, and therefor determines to seize an obligor's property, the department shall send written notice to the obligor by first-class mail to the last-known address of the obligor or to the last-known address of the obligor available to the court pursuant to section 42-364.13. For purposes of this section, reasonable efforts to verify means reviewing the case file and having written or oral communication with the clerk of the district court.

(2) The notice of arrearage shall:

(a) Specify the court or agency which issued the support order;

(b) Specify the arrearage under the support order which the obligor owes as of the date of the notice or other date certain;

(c) Specify that any enforcement action will incorporate any arrearage which may accrue in the future;

(d) State clearly, "Your property may be seized without further notice if you do not respond or clear up the arrearage"; and

(e) Specify that within twenty days after the notice is mailed, the obligor may request, in writing, a hearing to contest a mistake of fact. For purposes of this section, mistake of fact means an error in the amount of the arrearage or an error in the identity of the obligor.

(3) If the obligor files a written request for a hearing based upon a mistake of fact within twenty days after the notice is mailed, the department shall provide an opportunity for a hearing and shall stay enforcement action under sections 43-3333 to 43-3337 until the administrative appeal process is completed.

Source: Laws 1997, LB 752, § 33; Laws 2007, LB296, § 164.
Operative date July 1, 2007.

43-3334 Order to withhold and deliver; when; contents; payor; duties; fee. (1) The department may send a payor an order to withhold and deliver specifically identified property of any kind due, owing, or belonging to an obligor if (a) the department has reason to and does believe that there is in the possession of the payor property which is due, owing, or belonging to an obligor, (b) payment on a support order is in arrears, (c) the department sent a notice of arrearage to the obligor pursuant to section 43-3333 at least thirty days prior to sending the notice to withhold and deliver, and (d) no hearing was requested or after a hearing the department determined that an arrearage did exist or that there was no mistake of fact.

(2) The order to withhold and deliver shall state that notice has been mailed to the obligor in accordance with the requirements of subdivision (1)(c) of this section and that the obligor has not requested a hearing or, after a hearing, the department has determined that an arrearage exists or that there was no mistake of fact, the amount in arrears, the social security number of the obligor, the court or agency to which the property is to be delivered, instructions for transmitting the property, and information regarding the requirements found in subsection (3) of this section. The order shall include written questions regarding the property of every description, including whether or not any other person has an ownership interest in the property, and the credits of the obligor which are in the possession or under the control of the payor at the time the order is received.

(3) Upon receipt of an order to withhold and deliver, a payor shall:

(a) Hold property that is subject to the order and that is in the possession or under the control of the payor at the time the order to withhold and deliver was received, to the extent of the amount of the arrearage stated in the order until the payor receives further notice from the department;

(b) Answer all of the questions asked of the payor in the order, supply the name and address of any person that has an ownership interest in the property sought to be reached, and return such information to the department within five business days after receiving the order; and

(c) Upon further notice from the department, deliver any property which may be subject to the order to the court or agency designated in the order or release such property or portion thereof.

(4) An order to withhold and deliver shall have the same priority as a garnishment for the support of a person pursuant to subsection (4) of section 25-1056.

(5) If the payor is a financial institution, such financial institution may deduct and retain a processing fee from any amounts turned over to the department under this section. The processing fee shall not exceed ten dollars for each account turned over to the department.

Source: Laws 1997, LB 752, § 34; Laws 2004, LB 999, § 30; Laws 2007, LB296, § 165.
Operative date July 1, 2007.

43-3335 Order to withhold and deliver; notice to obligor; contents; appeal. (1) Within five days after the issuance of the order to withhold and deliver, the department shall

send written notice to the obligor by first-class mail. The notice shall be dated and shall specify the payor to which an order to withhold and deliver was sent, the amount due, the steps to be followed to release the property, the time period in which to respond to such notice, and the court or agency of competent jurisdiction which issued the support order.

(2) The obligor may request a hearing to contest a mistake of fact by sending a written request to the department within seven days after the date of the notice. The department shall provide an opportunity for a hearing within ten days after receipt of the written request and shall stay enforcement actions under sections 43-3333 to 43-3337 until the administrative appeal process is completed.

Source: Laws 1997, LB 752, § 35; Laws 2007, LB296, § 166.
Operative date July 1, 2007.

43-3336 Order to withhold and deliver; co-owner; notice; contents; appeal. (1) If, after receiving the information from the payor in subdivision (3)(b) of section 43-3334, the department has knowledge that another person has an ownership interest or may claim an ownership interest in any property sought to be reached which is in the possession or under the control of the payor as the property of the obligor, the department shall send written notice to such person or persons by certified mail, return receipt requested. The notice shall be dated and shall specify why the order to withhold and deliver was issued, the payor to which the order to withhold and deliver was sent, and that the person has a right to request a hearing by the department within fifteen days after the date of the notice to establish that the property or any part thereof is not the property of the obligor. The department shall provide an opportunity for hearing to a person making such request and shall stay enforcement actions under sections 43-3333 to 43-3337 until the administrative appeal process is completed.

(2) Any person other than the obligor claiming an ownership interest in any property sought to be reached which is in the possession or under the control of the payor as the property of the obligor has a right to timely request a hearing by the department to establish that the property or any part thereof is not the property of the obligor. The department shall provide an opportunity for hearing to a person making such request and shall stay enforcement actions under sections 43-3333 to 43-3337 until the administrative appeal process is completed. If the property or any part of the property which is in the possession or under the control of the payor is not the property of the obligor, the payor is discharged as to that property which is not the obligor's.

Source: Laws 1997, LB 752, § 36; Laws 2007, LB296, § 167.
Operative date July 1, 2007.

43-3338 Judicial review. Any person aggrieved by a determination of the department under sections 43-3328 to 43-3339, upon exhaustion of the procedures for administrative review provided in such sections, or the department may seek judicial review in the court in which the support order was issued or registered.

Source: Laws 1997, LB 752, § 38; Laws 2007, LB296, § 168.
Operative date July 1, 2007.

(e) STATE DISBURSEMENT UNIT

43-3342.01 State Disbursement Unit; Title IV-D Division; duties; records. (1) The responsibilities of the State Disbursement Unit shall include the following:

(a) Receipt of payments, except payments made pursuant to subdivisions (1)(a) and (1)(b) of section 42-369, and disbursements of such payments to obligees, the department, and the agencies of other states;

(b) Accurate identification of payments;

(c) Prompt disbursement of the obligee's share of any payments;

(d) Furnishing to any obligor or obligee, upon request, timely information on the current status of support order payments; and

(e) One location for employers to send income withholding payments.

(2) The Title IV-D Division shall maintain records of payments for all cases in which support order payments are made to the central office of the State Disbursement Unit using the statewide automated data processing and retrieval system. The Title IV-D Division shall not be required to convert and maintain records of support order payments kept by the clerk of the district court before the date that the State Disbursement Unit becomes operative or records of payments received by the clerk pursuant to section 42-369.

(3) A true copy of the record of payments, balances, and arrearages maintained by the Title IV-D Division is prima facie evidence, without further proof or foundation, of the balance of any amount of support order payments that are in arrears and of all payments made and disbursed to the person or agency to whom the support order payment is to be made. Such evidence shall be considered to be satisfactorily authenticated, shall be admitted as prima facie evidence of the transactions shown in such evidence, and is rebuttable only by a specific evidentiary showing to the contrary.

(4) A copy of support payment records maintained by the Title IV-D Division shall be considered to be a true copy of the record when certified by a person designated by the division pursuant to the rules and regulations adopted and promulgated pursuant to this section.

Source: Laws 2000, LB 972, § 1; Laws 2002, LB 1062, § 3; Laws 2007, LB554, § 44.
Operative date January 1, 2008.

43-3342.04 Title IV-D Division; establish Customer Service Unit; duties; report. (1) The Title IV-D Division shall establish a Customer Service Unit. In hiring the initial staff for the unit, a hiring preference shall be given to employees of the clerks of the district court. The duties of the Customer Service Unit include, but are not limited to:

(a) Providing account information as well as addressing inquiries made by customers of the State Disbursement Unit; and

(b) Administering two statewide toll-free telephone systems, one for use by employers and one for use by all other customers, to provide responses to inquiries regarding income withholding, the collection and disbursement of support order payments made to the State

Disbursement Unit, and other child support enforcement issues, including establishing a call center with sufficient telephone lines, a voice response unit, and adequate personnel available during normal business hours to ensure that responses to inquiries are made by the division's personnel or the division's designee.

(2) The physical location of the Customer Service Unit shall be in Nebraska and shall result in the hiring of a number of new employees or contractor's staff equal to at least one-fourth of one percent of the labor force in the county or counties in which the Customer Service Unit is located. Customer service staff responsible for providing account information related to the State Disbursement Unit may be located at the same location as the State Disbursement Unit.

(3) The department shall issue a report to the Governor and to the Legislature on or before January 31 of each year which discloses information relating to the operation of the State Disbursement Unit for the preceding calendar year including, but not limited to:

- (a) The number of transactions processed by the State Disbursement Unit;
- (b) The dollar amount collected by the State Disbursement Unit;
- (c) The dollar amount disbursed by the State Disbursement Unit;
- (d) The percentage of identifiable collections disbursed within two business days;
- (e) The percentage of identifiable collections that are matched to the correct case;
- (f) The number and dollar amount of insufficient funds checks received by the State Disbursement Unit;
- (g) The number and dollar amount of insufficient funds checks received by the State Disbursement Unit for which restitution is subsequently made to the State Disbursement Unit;
- (h) The number of incoming telephone calls processed through the Customer Service Unit;
- (i) The average length of incoming calls from employers;
- (j) The average length of incoming calls from all other customers;
- (k) The percentage of incoming calls resulting in abandonment by the customer;
- (l) The percentage of incoming calls resulting in a customer receiving a busy signal;
- (m) The average holding time for all incoming calls; and
- (n) The percentage of calls handled by employees of the Customer Service Unit that are resolved within twenty-four hours.

Source: Laws 2000, LB 972, § 4; Laws 2007, LB296, § 169.
Operative date July 1, 2007.

ARTICLE 34

EARLY CHILDHOOD INTERAGENCY COORDINATING COUNCIL

Section.

- 43-3401. Early Childhood Interagency Coordinating Council; created; membership; terms; expenses.
- 43-3402. Council; advisory duties.

43-3401 Early Childhood Interagency Coordinating Council; created; membership; terms; expenses. The Early Childhood Interagency Coordinating Council is created. The council shall advise and assist the collaborating agencies in carrying out the provisions of the Early Intervention Act, the Quality Child Care Act, sections 79-1101 to 79-1104, and other early childhood care and education initiatives under state supervision. Membership and activities of the council shall comply with all applicable provisions of federal law. Members of the council shall be appointed by the Governor and shall include, but not be limited to:

(1) Parents of children who require early intervention services, early childhood special education, and other early childhood care and education services; and

(2) Representatives of school districts, social services, health and medical services, family child care and center-based early childhood care and education programs, agencies providing training to staff of child care programs, resource and referral agencies, mental health services, developmental disabilities services, educational service units, Head Start, higher education, physicians, the Legislature, business persons, and the collaborating agencies.

Terms of the members shall be for three years, and a member shall not serve more than two consecutive three-year terms. Members shall be reimbursed for their actual and necessary expenses, including child care expenses, with funds provided for such purposes through the Early Intervention Act, the Quality Child Care Act, and sections 79-1101 to 79-1104.

Members of the Nebraska Interagency Coordinating Council serving on July 13, 2000, shall constitute the Early Childhood Interagency Coordinating Council and shall serve for the remainder of their terms. The Governor shall make additional appointments as required by this section and to fill vacancies as needed. The Governor shall set the initial terms of additional appointees to result in staggered terms for members of the council. The Department of Health and Human Services and the State Department of Education shall provide and coordinate staff assistance to the council.

Source: Laws 2000, LB 1135, § 6; Laws 2006, LB 994, § 63; Laws 2007, LB296, § 170. Operative date July 1, 2007.

Cross Reference

Early Intervention Act, see section 43-2501.

Quality Child Care Act, see section 43-2601.

43-3402 Council; advisory duties. With respect to the Early Intervention Act, the Quality Child Care Act, and sections 79-1101 to 79-1104, the Early Childhood Interagency Coordinating Council shall serve in an advisory capacity to state agencies responsible for early childhood care and education, including care for school-age children, in order to:

(1) Promote the policies set forth in the Early Intervention Act, the Quality Child Care Act, and sections 79-1101 to 79-1104;

(2) Facilitate collaboration with the federally administered Head Start program;

(3) Make recommendations to the Department of Health and Human Services, the State Department of Education, and other state agencies responsible for the regulation or provision

of early childhood care and education programs on the needs, priorities, and policies relating to such programs throughout the state;

(4) Make recommendations to the lead agency or agencies which prepare and submit applications for federal funding;

(5) Review new or proposed revisions to rules and regulations governing the registration or licensing of early childhood care and education programs;

(6) Study and recommend additional resources for early childhood care and education programs; and

(7) Report biennially to the Governor and Legislature on the status of early intervention and early childhood care and education in the state. Such report shall include (a) the number of license applications received under section 71-1911, (b) the number of such licenses issued, (c) the number of such license applications denied, (d) the number of complaints investigated regarding such licensees, (e) the number of such licenses revoked, (f) the number and dollar amount of civil penalties levied pursuant to section 71-1920, and (g) information which may assist the Legislature in determining the extent of cooperation provided to the Department of Health and Human Services by other state and local agencies pursuant to section 71-1914.

Source: Laws 2000, LB 1135, § 7; Laws 2006, LB 994, § 64; Laws 2007, LB296, § 171.
Operative date July 1, 2007.

Cross Reference

Early Intervention Act, see section 43-2501.
Quality Child Care Act, see section 43-2601.

ARTICLE 38

FOREIGN NATIONAL MINORS AND MINORS HOLDING DUAL CITIZENSHIP

Section.

43-3810. Coordination of activities; chief executive officer of the department; duties.

43-3810 Coordination of activities; chief executive officer of the department; duties. The chief executive officer of the department or his or her designee shall meet as necessary with consular officials to discuss, clarify, and coordinate activities, ideas and concerns of a high-profile nature, timely media attention, and joint prevention efforts regarding the protection and well-being of foreign national minors and minors holding dual citizenship and families.

Source: Laws 2006, LB 1113, § 10; Laws 2007, LB296, § 172.
Operative date July 1, 2007.

ARTICLE 39

UNIFORM CHILD ABDUCTION PREVENTION ACT

Section.

- 43-3901. Act, how cited.
- 43-3902. Definitions.
- 43-3903. Cooperation and communication among courts.
- 43-3904. Actions for abduction prevention measures.
- 43-3905. Jurisdiction.
- 43-3906. Contents of petition.
- 43-3907. Factors to determine risk of abduction.
- 43-3908. Provisions and measures to prevent abduction.
- 43-3909. Warrant to take physical custody of child.
- 43-3910. Duration of abduction prevention order.
- 43-3911. Uniformity of application and construction.
- 43-3912. Relation to federal Electronic Signatures in Global and National Commerce Act.

43-3901 Act, how cited. Sections 43-3901 to 43-3912 may be cited as the Uniform Child Abduction Prevention Act.

Source: Laws 2007, LB341, § 1.
Effective date February 2, 2007.

43-3902 Definitions. For purposes of the Uniform Child Abduction Prevention Act:

- (1) Abduction means the wrongful removal or wrongful retention of a child;
- (2) Child means an unemancipated individual who is less than eighteen years of age;
- (3) Child custody determination means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order;
- (4) Child custody proceeding means a proceeding in which legal custody, physical custody, or visitation with respect to a child is at issue. The term includes a proceeding for divorce, dissolution of marriage, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, or protection from domestic violence;
- (5) Court means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination;
- (6) Petition includes a motion or its equivalent;
- (7) Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;
- (8) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe or nation;

(9) Travel document means records relating to a travel itinerary, including travel tickets, passes, reservations for transportation, or accommodations. The term does not include a passport or visa;

(10) Wrongful removal means the taking of a child that breaches rights of custody or visitation given or recognized under the law of this state; and

(11) Wrongful retention means the keeping or concealing of a child that breaches rights of custody or visitation given or recognized under the law of this state.

Source: Laws 2007, LB341, § 2.
Effective date February 2, 2007.

43-3903 Cooperation and communication among courts. Sections 43-1235, 43-1236, and 43-1237 apply to cooperation and communications among courts in proceedings under the Uniform Child Abduction Prevention Act.

Source: Laws 2007, LB341, § 3.
Effective date February 2, 2007.

43-3904 Actions for abduction prevention measures. (a) A court on its own motion may order abduction prevention measures in a child custody proceeding if the court finds that the evidence establishes a credible risk of abduction of the child.

(b) A party to a child custody determination or another individual or entity having a right under the law of this state or any other state to seek a child custody determination for the child may file a petition seeking abduction prevention measures to protect the child under the Uniform Child Abduction Prevention Act.

(c) A county attorney or the Attorney General may seek a warrant to take physical custody of a child under section 43-3909 or other appropriate prevention measures.

Source: Laws 2007, LB341, § 4.
Effective date February 2, 2007.

43-3905 Jurisdiction. (a) A petition under the Uniform Child Abduction Prevention Act may be filed only in a court that has jurisdiction to make a child custody determination with respect to the child at issue under the Uniform Child Custody Jurisdiction and Enforcement Act.

(b) A court of this state has temporary emergency jurisdiction under section 43-1241 if the court finds a credible risk of abduction.

Source: Laws 2007, LB341, § 5.
Effective date February 2, 2007.

Cross Reference

Uniform Child Custody Jurisdiction and Enforcement Act, see section 43-1226.

43-3906 Contents of petition. A petition under the Uniform Child Abduction Prevention Act must be verified and include a copy of any existing child custody

determination, if available. The petition must specify the risk factors for abduction, including the relevant factors described in section 43-3907. Subject to subsection (e) of section 43-1246, if reasonably ascertainable, the petition must contain:

- (1) the name, date of birth, and gender of the child;
- (2) the customary address and current physical location of the child;
- (3) the identity, customary address, and current physical location of the respondent;
- (4) a statement of whether a prior action to prevent abduction or domestic violence has been filed by a party or other individual or entity having custody of the child, and the date, location, and disposition of the action;
- (5) a statement of whether a party to the proceeding has been arrested for a crime related to domestic violence, stalking, or child abuse or neglect, and the date, location, and disposition of the case; and
- (6) any other information required to be submitted to the court for a child custody determination under section 43-1246.

Source: Laws 2007, LB341, § 6.
Effective date February 2, 2007.

43-3907 Factors to determine risk of abduction. (a) In determining whether there is a credible risk of abduction of a child, the court shall consider any evidence that the petitioner or respondent:

- (1) has previously abducted or attempted to abduct the child;
- (2) has threatened to abduct the child;
- (3) has recently engaged in activities that may indicate a planned abduction, including:
 - (A) abandoning employment;
 - (B) selling a primary residence;
 - (C) terminating a lease;
 - (D) closing bank or other financial management accounts, liquidating assets, hiding or destroying financial documents, or conducting any unusual financial activities;
 - (E) applying for a passport or visa or obtaining travel documents for the respondent, a family member, or the child; or
 - (F) seeking to obtain the child's birth certificate or school or medical records;
- (4) has engaged in domestic violence, stalking, or child abuse or neglect;
- (5) has refused to follow a child custody determination;
- (6) lacks strong familial, financial, emotional, or cultural ties to the state or the United States;
- (7) has strong familial, financial, emotional, or cultural ties to another state or country;
- (8) is likely to take the child to a country that:
 - (A) is not a party to the Hague Convention on the Civil Aspects of International Child Abduction and does not provide for the extradition of an abducting parent or for the return of an abducted child;
 - (B) is a party to the Hague Convention on the Civil Aspects of International Child Abduction but:

- (i) the Hague Convention on the Civil Aspects of International Child Abduction is not in force between the United States and that country;
- (ii) is noncompliant according to the most recent compliance report issued by the United States Department of State; or
- (iii) lacks legal mechanisms for immediately and effectively enforcing a return order under the Hague Convention on the Civil Aspects of International Child Abduction;
- (C) poses a risk that the child's physical or emotional health or safety would be endangered in the country because of specific circumstances relating to the child or because of human rights violations committed against children;
- (D) has laws or practices that would:
 - (i) enable the respondent, without due cause, to prevent the petitioner from contacting the child;
 - (ii) restrict the petitioner from freely traveling to or exiting from the country because of the petitioner's gender, nationality, marital status, or religion; or
 - (iii) restrict the child's ability legally to leave the country after the child reaches the age of majority because of a child's gender, nationality, or religion;
- (E) is included by the United States Department of State on a current list of state sponsors of terrorism;
- (F) does not have an official United States diplomatic presence in the country; or
- (G) is engaged in active military action or war, including a civil war, to which the child may be exposed;
- (9) is undergoing a change in immigration or citizenship status that would adversely affect the respondent's ability to remain in the United States legally;
- (10) has had an application for United States citizenship denied;
- (11) has forged or presented misleading or false evidence on government forms or supporting documents to obtain or attempt to obtain a passport, a visa, travel documents, a Social Security card, a driver's license, or other government-issued identification card or has made a misrepresentation to the United States government;
- (12) has used multiple names to attempt to mislead or defraud;
- (13) is likely to disregard a determination by a court of this state to not recognize and enforce a foreign child custody determination pursuant to subsection (d) of section 43-1230; or
- (14) has engaged in any other conduct the court considers relevant to the risk of abduction.
- (b) In the hearing on a petition under the Uniform Child Abduction Prevention Act, the court shall consider any evidence that the respondent believed in good faith that the respondent's conduct was necessary to avoid imminent harm to the child or respondent and any other evidence that may be relevant to whether the respondent may be permitted to remove or retain the child.

Source: Laws 2007, LB341, § 7.
Effective date February 2, 2007.

43-3908 Provisions and measures to prevent abduction. (a) If a petition is filed under the Uniform Child Abduction Prevention Act, the court may enter an order that must include:

- (1) the basis for the court's exercise of jurisdiction;
- (2) the manner in which notice and opportunity to be heard were given to the persons entitled to notice of the proceeding;
- (3) a detailed description of each party's custody and visitation rights and residential arrangements for the child;
- (4) a provision stating that a violation of the order may subject the party in violation to civil and criminal penalties; and
- (5) identification of the child's country of habitual residence at the time of the issuance of the order.

(b) If, at a hearing on a petition under the act or on the court's own motion, the court after reviewing the evidence finds a credible risk of abduction of the child, the court shall enter an abduction prevention order. The order must include the provisions required by subsection (a) of this section, and measures and conditions, including those in subsections (c), (d), and (e) of this section, that are reasonably calculated to prevent abduction of the child, giving due consideration to the custody and visitation rights of the parties. The court shall consider the age of the child, the potential harm to the child from an abduction, the legal and practical difficulties of returning the child to the jurisdiction if abducted, and the reasons for the potential abduction, including evidence of domestic violence, stalking, or child abuse or neglect.

(c) An abduction prevention order may include one or more of the following:

(1) an imposition of travel restrictions that require that a party traveling with the child outside a designated geographical area provide the other party with the following:

- (A) the travel itinerary of the child;
- (B) a list of physical addresses and telephone numbers at which the child can be reached at specified times; and
- (C) copies of all travel documents;

(2) a prohibition of the respondent directly or indirectly:

- (A) removing the child from this state, the United States, or another geographic area without permission of the court or the petitioner's written consent;
- (B) removing or retaining the child in violation of a child custody determination;
- (C) removing the child from school or a child care or similar facility; or
- (D) approaching the child at any location other than a site designated for supervised visitation;

(3) a requirement that a party register the order in another state as a prerequisite to allowing the child to travel to that state;

(4) with regard to the child's passport:

- (A) a direction that the petitioner place the child's name in the United States Department of State's Child Passport Issuance Alert Program;

(B) a requirement that the respondent surrender to the court or the petitioner's attorney any United States or foreign passport issued in the child's name, including a passport issued in the name of both the parent and the child; and

(C) a prohibition upon the respondent from applying on behalf of the child for a new or replacement passport or visa;

(5) as a prerequisite to exercising custody or visitation, a requirement that the respondent provide:

(A) to the United States Department of State Office of Children's Issues and the relevant foreign consulate or embassy, an authenticated copy of the order detailing passport and travel restrictions for the child;

(B) to the court:

(i) proof that the respondent has provided the information in subdivision (5)(A) of this section; and

(ii) an acknowledgment in a record from the relevant foreign consulate or embassy that no passport application has been made, or passport issued, on behalf of the child;

(C) to the petitioner, proof of registration with the United States Embassy or other United States diplomatic presence in the destination country and with the Central Authority for the Hague Convention on the Civil Aspects of International Child Abduction, if that Convention is in effect between the United States and the destination country, unless one of the parties objects; and

(D) a written waiver under the Privacy Act, 5 U.S.C. section 552a, with respect to any document, application, or other information pertaining to the child authorizing its disclosure to the court and the petitioner; and

(6) upon the petitioner's request, a requirement that the respondent obtain an order from the relevant foreign country containing terms identical to the child custody determination issued in the United States.

(d) In an abduction prevention order, the court may impose conditions on the exercise of custody or visitation that:

(1) limit visitation or require that visitation with the child by the respondent be supervised until the court finds that supervision is no longer necessary and order the respondent to pay the costs of supervision;

(2) require the respondent to post a bond or provide other security in an amount sufficient to serve as a financial deterrent to abduction, the proceeds of which may be used to pay for the reasonable expenses of recovery of the child, including reasonable attorney's fees and costs if there is an abduction; and

(3) require the respondent to obtain education on the potentially harmful effects to the child from abduction.

(e) To prevent imminent abduction of a child, a court may:

(1) issue a warrant to take physical custody of the child under section 43-3909 or the law of this state other than the act;

(2) direct the use of law enforcement to take any action reasonably necessary to locate the child, obtain return of the child, or enforce a custody determination under the act or the law of this state other than the act; or

(3) grant any other relief allowed under the law of this state other than the act.

(f) The remedies provided in the act are cumulative and do not affect the availability of other remedies to prevent abduction.

Source: Laws 2007, LB341, § 8.
Effective date February 2, 2007.

43-3909 Warrant to take physical custody of child. (a) If a petition under the Uniform Child Abduction Prevention Act contains allegations, and the court finds that there is a credible risk that the child is imminently likely to be wrongfully removed, the court may issue an ex parte warrant to take physical custody of the child.

(b) The respondent on a petition under subsection (a) of this section must be afforded an opportunity to be heard at the earliest possible time after the ex parte warrant is executed, but not later than the next judicial day unless a hearing on that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible.

(c) An ex parte warrant under subsection (a) of this section to take physical custody of a child must:

(1) recite the facts upon which a determination of a credible risk of imminent wrongful removal of the child is based;

(2) direct law enforcement officers to take physical custody of the child immediately;

(3) state the date and time for the hearing on the petition; and

(4) provide for the safe interim placement of the child pending further order of the court.

(d) If feasible, before issuing a warrant and before determining the placement of the child after the warrant is executed, the court may order a search of the relevant data bases of the National Crime Information Center system and similar state data bases to determine if either the petitioner or respondent has a history of domestic violence, stalking, or child abuse or neglect.

(e) The petition and warrant must be served on the respondent when or immediately after the child is taken into physical custody.

(f) A warrant to take physical custody of a child, issued by this state or another state, is enforceable throughout this state. If the court finds that a less intrusive remedy will not be effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances, the court may authorize law enforcement officers to make a forcible entry at any hour.

(g) If the court finds, after a hearing, that a petitioner sought an ex parte warrant under subsection (a) of this section for the purpose of harassment or in bad faith, the court may award the respondent reasonable attorney's fees, costs, and expenses.

(h) The act does not affect the availability of relief allowed under the law of this state other than the act.

Source: Laws 2007, LB341, § 9.
Effective date February 2, 2007.

43-3910 Duration of abduction prevention order. An abduction prevention order remains in effect until the earliest of:

- (1) the time stated in the order;
- (2) the emancipation of the child;
- (3) the child's attaining eighteen years of age; or
- (4) the time the order is modified, revoked, vacated, or superseded by a court with jurisdiction under sections 43-1238 to 43-1240.

Source: Laws 2007, LB341, § 10.
Effective date February 2, 2007.

43-3911 Uniformity of application and construction. In applying and construing the Uniform Child Abduction Prevention Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: Laws 2007, LB341, § 11.
Effective date February 2, 2007.

43-3912 Relation to federal Electronic Signatures in Global and National Commerce Act. The Uniform Child Abduction Prevention Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101(c) of such act, 15 U.S.C. 7001(c), of such act or authorize electronic delivery of any of the notices described in section 103(b) of such act, 15 U.S.C. 7003(b).

Source: Laws 2007, LB341, § 12.
Effective date February 2, 2007.

ARTICLE 40

CHILDREN'S BEHAVIORAL HEALTH

Section.

- 43-4001. Children's Behavioral Health Task Force; created; members; expenses; chairperson.
- 43-4002. Children's Behavioral Health Task Force; prepare children's behavioral health plan; contents; department; duties; implementation.
- 43-4003. Children's Behavioral Health Task Force; duties.

43-4001 Children's Behavioral Health Task Force; created; members; expenses; chairperson. (1) The Children's Behavioral Health Task Force is created. The task force shall consist of the following members:

(a) The chairperson of the Health and Human Services Committee of the Legislature or his or her designee;

(b) The chairperson of the Appropriations Committee of the Legislature or his or her designee;

(c) The chairperson of the Behavioral Health Oversight Commission of the Legislature;

(d) Two providers of community-based behavioral health services to children, appointed by the chairperson of the Health and Human Services Committee of the Legislature;

(e) One regional administrator appointed under section 71-808, appointed by the chairperson of the Health and Human Services Committee of the Legislature;

(f) Two representatives of organizations advocating on behalf of consumers of children's behavioral health services and their families, appointed by the chairperson of the Health and Human Services Committee of the Legislature;

(g) One juvenile court judge, appointed by the Chief Justice of the Supreme Court;

(h) Two representatives of the Department of Health and Human Services, appointed by the Governor; and

(i) The Administrator of the Office of Juvenile Services.

(2) All members shall be appointed within thirty days after May 25, 2007.

(3) Members of the task force shall serve without compensation but shall be reimbursed from the Nebraska Health Care Cash Fund for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(4) The chairperson of the Behavioral Health Oversight Commission of the Legislature shall serve as chairperson of the task force. Administrative and staff support for the task force shall be provided by the Health and Human Services Committee of the Legislature and the Appropriations Committee of the Legislature.

Source: Laws 2007, LB542, § 1.
Effective date May 25, 2007.

43-4002 Children's Behavioral Health Task Force; prepare children's behavioral health plan; contents; department; duties; implementation. (1) The Children's Behavioral Health Task Force, under the direction of and in consultation with the Health and Human Services Committee of the Legislature and the Department of Health and Human Services, shall prepare a children's behavioral health plan and shall submit such plan to the Governor and the committee on or before December 4, 2007. The scope of the plan shall include juveniles accessing public behavioral health resources.

(2) The plan shall include, but not be limited to:

(a) Plans for the development of a statewide integrated system of care to provide appropriate educational, behavioral health, substance abuse, and support services to children and their families. The integrated system of care should serve both adjudicated and nonadjudicated juveniles with behavioral health or substance abuse issues;

(b) Plans for the development of community-based inpatient and subacute substance abuse and behavioral health services and the allocation of funding for such services to the community pursuant to subdivision (4) of section 43-406;

(c) Strategies for effectively serving juveniles assessed in need of substance abuse or behavioral health services upon release from the Youth Rehabilitation and Treatment Center-Kearney or Youth Rehabilitation and Treatment Center-Geneva;

(d) Plans for the development of needed capacity for the provision of community-based substance abuse and behavioral health services for children;

(e) Strategies and mechanisms for the integration of federal, state, local, and other funding sources for the provision of community-based substance abuse and behavioral health services for children;

(f) Measurable benchmarks and timelines for the development of a more comprehensive and integrated system of substance abuse and behavioral health services for children;

(g) Identification of necessary and appropriate statutory changes for consideration by the Legislature; and

(h) Development of a plan for a data and information system for all children receiving substance abuse and behavioral health services shared among all parties involved in the provision of services for children.

(3) The department shall provide a written implementation and appropriations plan for the children's behavioral health plan to the Governor and the committee by January 4, 2008. The chairperson of the Health and Human Services Committee of the Legislature shall prepare legislation or amendments to legislation to implement this subsection for introduction in the 2008 legislative session.

Source: Laws 2007, LB542, § 2.
Effective date May 25, 2007.

43-4003 Children's Behavioral Health Task Force; duties. The Children's Behavioral Health Task Force will oversee implementation of the children's behavioral health plan until June 30, 2010, at which time the task force shall submit to the Governor and the Legislature a recommendation regarding the necessity of continuing the task force.

Source: Laws 2007, LB542, § 3.
Effective date May 25, 2007.

CHAPTER 44

INSURANCE

Article.

2. Lines of Insurance, Organization of Companies. 44-211.
3. General Provisions Relating to Insurance. 44-319.07, 44-3,158.
5. Standard Provisions and Forms. 44-501 to 44-526.
7. General Provisions Covering Life, Sickness, and Accident Insurance. 44-771 to 44-7,102.
11. Viatical Settlements Act. 44-1102, 44-1104.
28. Nebraska Hospital-Medical Liability Act. 44-2804 to 44-2847.
29. Nebraska Hospital and Physicians Mutual Insurance Association Act. 44-2901 to 44-2904.
32. Health Maintenance Organizations. 44-32,119 to 44-32,176.
35. Service Contracts.
 - (b) Motor Vehicles. 44-3522.
41. Preferred Providers. 44-4109.01, 44-4110.
45. Long-Term Care Insurance Act. 44-4501 to 44-4521.
51. Investments. 44-5103 to 44-5153.
55. Surplus Lines Insurance. 44-5501 to 44-5515.
70. Health Care Professional Credentialing Verification Act. 44-7006.
71. Managed Care Plan Network Adequacy Act. 44-7107.
72. Quality Assessment and Improvement Act. 44-7206.
73. Health Carrier Grievance Procedure Act. 44-7306.
75. Property and Casualty Insurance Rate and Form Act. 44-7504.
81. Nebraska Protection in Annuity Transactions Act. 44-8101 to 44-8107.
82. Captive Insurers Act. 44-8201 to 44-8218.

ARTICLE 2

LINES OF INSURANCE, ORGANIZATION OF COMPANIES

Section.

- 44-211. Incorporators; manage business until first meeting of shareholders; board of directors; election; number; qualifications; powers.

44-211 Incorporators; manage business until first meeting of shareholders; board of directors; election; number; qualifications; powers. The business and affairs of an insurance corporation shall be managed by the incorporators until the first meeting of shareholders or members and then and thereafter by a board of directors elected by the shareholders or members and as otherwise provided by law. The board of directors shall consist of not less than five persons, and one of them shall be a resident of the State of Nebraska. At least one-fifth of the directors of an insurance company, which is not subject

to section 44-2135, shall be persons who are not officers or employees of such company. A person convicted of a felony may not be a director, and all directors shall be of good moral character and known professional, administrative, or business ability, such business ability to include a practical knowledge of insurance, finance, or investment. No person shall hold the office of director unless he or she is a policyholder, if the company is a mutual company or assessment association. Unless otherwise provided in the articles of incorporation, the board of directors shall make all bylaws. A director shall discharge his or her duties as a director in accordance with section 21-2095.

Source: Laws 1913, c. 154, § 82, p. 429; R.S.1913, § 3219; Laws 1919, c. 190, tit. V, art. V, § 5, p. 609; C.S.1922, § 7818; C.S.1929, § 44-405; R.S.1943, § 44-211; Laws 1953, c. 145, § 1, p. 469; Laws 1959, c. 195, § 1, p. 702; Laws 1961, c. 212, § 1, p. 630; Laws 1965, c. 255, § 1, p. 722; Laws 1967, c. 263, § 1, p. 706; Laws 1989, LB 92, § 57; Laws 1991, LB 236, § 35; Laws 1999, LB 259, § 2; Laws 2007, LB191, § 2.
Effective date March 8, 2007.

ARTICLE 3

GENERAL PROVISIONS RELATING TO INSURANCE

Section.

- 44-319.07. Securities; exchange; withdrawal; approval of director; forfeiture for failure to comply.
44-3,158. Workers' compensation insurance; assigned risk system; director; powers; certain actions of employer; effect.

44-319.07 Securities; exchange; withdrawal; approval of director; forfeiture for failure to comply. (1) The depositing insurer or assessment association may, from time to time, exchange for the deposited securities, or any of them, other securities eligible for deposit if the aggregate value of such deposit will not thereby be reduced below the amount required by sections 44-319.01 to 44-319.13. Upon application of the depositing insurer or assessment association, the director may approve the withdrawal of securities which are in excess of the amount required by sections 44-319.01 to 44-319.13. Insurers and assessment associations may, upon an application approved by the director, withdraw all or any part of the securities so deposited upon good cause therefor being shown. Securities so withdrawn shall, except if withdrawn as the result of a merger, consolidation, or total reinsurance, be used to pay excess losses only and shall be restored within such time and under such conditions as the director may direct by order.

(2) If the depositing insurer or assessment association fails to comply with the requirements of subsection (1) of this section or the rules and regulations adopted and promulgated pursuant to section 44-319.11, such insurer or assessment association shall forfeit five hundred dollars for each such failure. The director shall collect and remit the forfeitures to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1955, c. 174, § 7, p. 500; Laws 2007, LB117, § 2.
Effective date September 1, 2007.

44-3,158 Workers' compensation insurance; assigned risk system; director; powers; certain actions of employer; effect. (1) For purposes of this section:

(a) Assigned risk employer means a Nebraska employer that is in good faith entitled to, but is unable to obtain, workers' compensation insurance through ordinary methods; and

(b) Director means the Director of Insurance.

(2)(a) The director shall enter into an agreement with one or more workers' compensation insurers to provide workers' compensation insurance to assigned risk employers. In selecting an insurer to become an assigned risk insurer, the director shall consider the cost of coverage to assigned risk employers, the loss control and claims handling services available from the workers' compensation insurer, the financial condition of the workers' compensation insurer, and any other relevant factors. An agreement entered into under this subsection may not exceed five years.

(b) If the director determines that the cost of workers' compensation insurance premiums for an insurer to provide assigned risk coverage pursuant to such an agreement would be unreasonably high, the director may enter into an agreement in which the assigned risk insurer covers a portion of the losses incurred by the assigned risk employer. Any agreement that involves an average rate level of less than two and one-half times the prospective loss costs approved for an advisory organization pursuant to section 44-7511 shall not be considered unreasonably high for the purposes of this section. Pursuant to any such agreement, remaining losses shall be assessed against all workers' compensation insurers writing workers' compensation insurance in this state and risk management pools created under the Intergovernmental Risk Management Act based on their workers' compensation premiums written in this state or contributions made to risk management pools. Assigned risk premiums shall be excluded from the basis for such assessments.

(c) If the assigned risk system described in subdivisions (2)(a) and (b) of this section ceases to be viable because no qualified insurer is willing to provide workers' compensation coverage at an average rate level of two and one-half times the prospective loss costs approved for an advisory organization pursuant to section 44-7511 without also requiring substantial sharing of losses with all other workers' compensation insurers writing workers' compensation insurance in this state and risk management pools created under the Intergovernmental Risk Management Act, then the director may, after consultation with insurers authorized to issue workers' compensation insurance policies in this state, create a reasonable alternative assigned risk system involving the sharing of premiums and losses for assigned risk employers among all such workers' compensation insurers writing workers' compensation insurance in this state and such risk management pools. If established, such alternative assigned risk system shall not utilize an average rate level of less than two and one-half times the prospective loss costs approved for an advisory organization pursuant to section 44-7511.

(3) The director may adopt and promulgate rules and regulations to carry out this section.

(4) An employer shall not be considered to be in good faith entitled to be covered by workers' compensation insurance under this section if:

- (a) The employer is required to establish a safety committee pursuant to sections 48-443 to 48-445 and is not in compliance with such sections;
- (b) The employer is in default on workers' compensation premiums;
- (c) The employer has failed to reimburse an insurer for amounts to be repaid pursuant to workers' compensation insurance written on a policy with a deductible;
- (d) The employer has failed to provide an insurer reasonable access to books and records necessary for a premium audit;
- (e) The employer has defrauded or attempted to defraud an insurer; or
- (f) The employer is found to have been owned or controlled by persons who owned or controlled a prior employer that is or would be ineligible for coverage pursuant to subdivisions (4)(b) through (e) of this section.

Source: Laws 1971, LB 572, § 15; Laws 1986, LB 811, § 72; Laws 1993, LB 757, § 14; Laws 2000, LB 1119, § 39; Laws 2005, LB 119, § 42; R.S.Supp.,2006, § 48-146.01; Laws 2007, LB117, § 3. Effective date September 1, 2007.

Cross Reference

Intergovernmental Risk Management Act, see section 44-4301.

ARTICLE 5

STANDARD PROVISIONS AND FORMS

Section.

- 44-501. Fire insurance policies; form; contents.
- 44-507. Foreign and domestic companies; policies; contents; reciprocity.
- 44-508. Liability insurance; automobiles; bankruptcy of insured; policy provisions; reciprocity.
- 44-514. Automobile liability policy; terms, defined.
- 44-522. Policies; cancellation requirements.
- 44-526. Health claim form; terms, defined.

44-501 Fire insurance policies; form; contents. No policy or contract of fire and lightning insurance, including a renewal thereof, shall be made, issued, used, or delivered by any insurer or by any insurance producer or representative of an insurer on property within this state other than such as shall conform as nearly as practicable to blanks, size of type, context, provisions, agreements, and conditions with the 1943 Standard Fire Insurance Policy of the State of New York, a copy of which shall be filed in the office of the Director of Insurance as standard policy for this state, and no other or different provision, agreement, condition, or clause shall in any manner be made a part of such contract or policy or be endorsed thereon or delivered therewith except as provided in subdivisions (1) through (11) of this section.

(1) The name of the company, its location and place of business, the date of its incorporation or organization, the state or country under which such company is organized, the amount of paid-up capital stock, whether it is a stock, mutual, reciprocal, or assessment company, the

names of its officers, the number and date of the policy, and appropriate company emblems may be printed on policies issued on property in this state. Any insurer organized under special charter provisions may so indicate upon its policy and may add a statement of the plan under which it operates in this state.

In lieu of the facsimile signatures of the president and secretary of the insurer on such policy, there may appear the signature or signatures of such persons as are duly authorized by the insurer to execute the contract. No such policy shall be void if the facsimile signature or signatures of any officer of the company shall not correspond with the actual persons who are such officers at the inception of the contract if such policy is countersigned by a duly authorized agent of the insurer.

(2) Printed or written forms of description and specifications or schedules of the property covered by any particular policy and any other matter necessary to express clearly all the facts and conditions of insurance on any particular risk, which facts or conditions shall in no case be inconsistent with or a waiver of any of the provisions or conditions of the standard policy herein provided for, may be written upon or attached or appended to any policy issued on property in this state. Appropriate forms of supplemental contracts, contracts, or endorsements, whereby the interest in the property described in such policy shall be insured against one or more of the perils which insurer is empowered to assume, may be used in connection with the standard policy. Such forms of contracts, supplemental contracts, or endorsements attached or printed thereon may contain provisions and stipulations inconsistent with the standard policy if applicable only to such other perils. The pages of the standard policy may be renumbered and rearranged for convenience in the preparation of individual contracts and to provide space for the listing of rates and premiums for coverages insured thereunder or under endorsements attached or printed thereon and such other data as may be included for duplication on daily reports for office records.

(3) A company, corporation, or association organized or incorporated under and in pursuance of the laws of this state or elsewhere, if entitled to do business in this state, may with the approval of the Director of Insurance, if the same is not already included in the standard form as filed in the office of the Department of Insurance, print on its policies any provision which it is required by law to insert therein if the provision is not in conflict with the laws of this state or the United States or with the provisions of the standard form provided for in this section, but such provision shall be printed apart from the other provisions, agreements, or conditions of the policy and in type not smaller than the body of the policy and a separate title, as follows: Provisions required by law to be stated in this policy, and be a part of the policy.

(4) There may be endorsed on the outside of any policy provided for in this section for the name, with the words insurance producer and place of business, of any insurance producer, either by writing, printing, stamping, or otherwise. There may also be added, with the approval of the Director of Insurance, a statement of the group of companies with which the company is financially affiliated and the usual company medallion.

(5) When two or more companies, each having previously complied with the laws of this state, unite to issue a joint policy, there may be expressed in the headline of each policy the

fact of the severalty of the contract and also the proportion of premiums to be paid to each company and the proportion of liability which each company agrees to assume. In the printed conditions of such policy, the necessary change may be made from the singular to plural number when reference is made to the companies issuing such policy.

(6) This section shall not apply to motor vehicle, inland marine, or ocean marine insurance, reinsurance contracts between insurance companies, or insurance that does not cover risks of a personal nature. An insurer may file with the director, pursuant to the Property and Casualty Insurance Rate and Form Act, any form of policy which includes coverage against the peril of fire and substantial coverage against other perils without complying with the provisions of this section if such policy with respect to the peril of fire includes provisions which are the substantial equivalent of the minimum provisions of the standard policy provided for in this section and if the policy is complete as to all its terms without reference to any other document.

(7) If the policy is made by a mutual assessment or other company having special regulations lawfully applicable to its organization, membership, policies, or contracts of insurance, such regulations shall apply to and form a part of the policy as the same may be written or printed upon or attached or appended thereto.

(8) Assessment associations may issue policies with such modifications as shall be filed with the director pursuant to the Property and Casualty Insurance Rate and Form Act.

(9) Any other coverage which a company is authorized to write under the laws of this state may be written in combination with a fire insurance policy.

(10) The policy shall provide that claims involving total loss situations shall be paid in accordance with section 44-501.02.

(11) Notwithstanding any other provision of this section, an insurer may file, pursuant to the Property and Casualty Insurance Rate and Form Act, any form of policy with variations in terms and conditions from the standard policy provided for in this section.

Source: Laws 1913, c. 154, § 100, p. 444; R.S.1913, § 3237; Laws 1919, c. 190, tit. V, art. VII, § 1, p. 625; C.S.1922, § 7836; C.S.1929, § 44-601; R.S.1943, § 44-501; Laws 1951, c. 139, § 1, p. 572; Laws 1959, c. 207, § 1, p. 724; Laws 1973, LB 51, § 1; Laws 1989, LB 92, § 119; Laws 2003, LB 216, § 5; Laws 2007, LB117, § 4.
Effective date September 1, 2007.

Cross Reference

Property and Casualty Insurance Rate and Form Act, see section 44-7501.

44-507 Foreign and domestic companies; policies; contents; reciprocity. The policies of any insurance company not organized under the laws of this state may, if filed with the director pursuant to the Property and Casualty Insurance Rate and Form Act, contain any provisions which the law of the state, territory, district, or country under which the company is organized prescribes shall be in such policies when issued in this state, and the policies of any insurance company organized under the laws of this state may, when issued or delivered in any other state, territory, district, or country, contain any provision required by the laws

of the state, territory, district, or country in which such policies are issued, the provisions of sections 44-501 to 44-510 to the contrary notwithstanding.

Source: Laws 1913, c. 154, § 106, p. 453; R.S.1913, § 3243; Laws 1919, c. 190, tit. V, art. VII, § 7, p. 634; C.S.1922, § 7842; Laws 1925, c. 124, § 4, p. 330; C.S.1929, § 44-607; Laws 2007, LB117, § 5. Effective date September 1, 2007.

Cross Reference

Property and Casualty Insurance Rate and Form Act, see section 44-7501.

44-508 Liability insurance; automobiles; bankruptcy of insured; policy provisions; reciprocity. The policies or contracts of insurance covering legal liability for injury to a person or persons caused by the ownership, operation, use, or maintenance of an automobile issued by any domestic or foreign company shall, if filed with the director pursuant to the Property and Casualty Insurance Rate and Form Act, contain a provision that the insolvency or bankruptcy of the assured shall not release the company from the payment of damages for injury sustained or loss occasioned during the life of the policy, and, in case of such insolvency or bankruptcy, an action may be maintained within the terms and limits of the policy by the injured person or his or her heirs against the insurer.

Source: Laws 1925, c. 124, § 4, p. 330; C.S.1929, § 44-607; Laws 2007, LB117, § 6. Effective date September 1, 2007.

Cross Reference

Property and Casualty Insurance Rate and Form Act, see section 44-7501.

44-514 Automobile liability policy; terms, defined. For purposes of sections 44-514 to 44-521, unless the context otherwise requires:

(1) Policy shall mean an automobile liability policy providing all or part of the coverage defined in subdivision (2) of this section, delivered or issued for delivery in this state, insuring a natural person as named insured or one or more related individuals resident of the same household, and under which the insured vehicles designated in the policy are of the following types only: (a) A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers nor rented to others; or (b) any other four-wheel motor vehicle of the pickup, panel, or delivery type which is not used in the occupation, profession, or business of the insured, except that sections 44-514 to 44-521 shall not apply (i) to any policy issued under an automobile assigned risk plan; (ii) to any policy subject to section 44-523; (iii) to any policy covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards; or (iv) to any policy of insurance issued principally to cover personal or premises liability of an insured even though such insurance may also provide some incidental coverage for liability arising out of the ownership, maintenance, or use of a motor vehicle on the premises of such insured or on the way immediately adjoining such premises;

(2) Automobile liability coverage shall include only coverage of bodily injury and property damage liability, medical payments, uninsured motorist coverage, and underinsured motorist coverage;

(3) Renewal or to renew shall mean the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term, except that (a) any policy with a policy period or term of less than six months shall be considered as if written for a policy period or term of six months and (b) any policy written for a term longer than one year or any policy with no fixed expiration date shall be considered as if written for successive policy periods or terms of one year, and such policy may be terminated at the expiration of any annual period upon giving twenty days' notice of cancellation prior to such anniversary date, and such cancellation shall not be subject to any other provisions of sections 44-514 to 44-521; and

(4) Nonpayment of premium shall mean failure of the named insured to discharge when due any of his or her obligations in connection with the payment of any premium on a policy or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit.

Source: Laws 1972, LB 1396, § 1; Laws 1989, LB 92, § 124; Laws 2007, LB115, § 1.
Effective date September 1, 2007.

44-522 Policies; cancellation requirements. (1) No insurer may file an insurance policy with the department, as required by the Property and Casualty Insurance Rate and Form Act, which insures against loss or damage to property or against legal liability from any cause unless such policy contains appropriate provisions for cancellation thereof by either the insurer or the insured and for nonrenewal thereof by the insurer.

(2) On any policy or binder of property, marine, or liability insurance, as specified in section 44-201, the insurer shall give the insured sixty days' written notice prior to cancellation or nonrenewal of such policy or binder, except that the insurer may cancel upon ten days' written notice to the insured in the event of nonpayment of premium or if such policy or binder has a specified term of sixty days or less unless the policy or binder has previously been renewed. The requirements of this subsection shall apply to a cancellation initiated by a premium finance company for nonpayment of premium. The provisions of this subsection and subsection (4) of this section shall not apply to nonrenewal of a policy or binder which has a specified term of sixty days or less unless the policy or binder has previously been renewed. Such notice shall state the reason for cancellation or nonrenewal.

(3) Notwithstanding subsection (2) of this section, no policy of property, marine, or liability insurance, as specified in section 44-201, which has been in effect for more than sixty days shall be canceled by the insurer except for one of the following reasons:

- (a) Nonpayment of premium;
- (b) The policy was obtained through a material misrepresentation;
- (c) Any insured has submitted a fraudulent claim;
- (d) Any insured has violated any of the terms and conditions of the policy;
- (e) The risk originally accepted has substantially increased;

(f) Certification to the Director of Insurance of loss of reinsurance by the insurer which provided coverage to the insurer for all or a substantial part of the underlying risk insured; or

(g) The determination by the director that the continuation of the policy could place the insurer in violation of the insurance laws of this state.

(4) Notice of cancellation or nonrenewal shall be sent by registered, certified, or first-class mail to the insured's last mailing address known to the insurer. If sent by first-class mail, a United States Postal Service certificate of mailing shall be sufficient proof of receipt of notice on the third calendar day after the date of the certificate.

(5) For purposes of this section:

(a) An insurer's substitution of insurance upon renewal which results in substantially equivalent coverage shall not be considered a cancellation of or a refusal to renew a policy; and

(b) The transfer of a policyholder between insurers within the same insurance group shall be considered a cancellation or a refusal to renew a policy only if the transfer results in policy coverage or rates substantially less favorable to the insured.

(6) The requirements of subsections (2), (3), and (4) of this section shall not apply to automobile insurance coverage, insurance coverage issued under the Nebraska Workers' Compensation Act, insurance coverage on growing crops, or insurance coverage which is for a specified season or event and which is not subject to renewal or replacement.

(7) All policy forms issued for delivery in Nebraska shall conform to this section.

Source: Laws 1913, c. 154, § 72, p. 424; R.S.1913, § 3208; Laws 1919, c. 190, tit. V, art. IV, § 42, p. 604; C.S.1922, § 7807; C.S.1929, § 44-342; R.S.1943, § 44-379; Laws 1955, c. 176, § 1, p. 505; Laws 1986, LB 1184, § 1; R.S.1943, (1988), § 44-379; Laws 1989, LB 92, § 126; Laws 1991, LB 233, § 45; Laws 1999, LB 326, § 3; Laws 2000, LB 1119, § 37; Laws 2001, LB 360, § 5; Laws 2007, LB117, § 7.
Effective date September 1, 2007.

Cross Reference

Nebraska Workers' Compensation Act, see section 48-1,110.

Property and Casualty Insurance Rate and Form Act, see section 44-7501.

44-526 Health claim form; terms, defined. For purposes of the Standardized Health Claim Form Act:

(1) Ambulatory surgical facility shall mean a facility, not a part of a hospital, which provides surgical treatment to patients not requiring hospitalization and which is licensed as a health clinic as defined by section 71-416 but shall not include the offices of private physicians or dentists whether for individual or group practice;

(2) Health care shall mean any treatment, procedure, or intervention to diagnose, cure, care for, or treat the effects of disease or injury or congenital or degenerative condition;

(3) Health care practitioner shall mean an individual or group of individuals in the form of a partnership, limited liability company, or corporation licensed, certified, or otherwise authorized or permitted by law to administer health care in the course of professional practice and shall include the health care professions and occupations which are regulated in the Uniform Credentialing Act;

(4) Hospital shall mean a hospital as defined by section 71-419 except state hospitals administered by the Department of Health and Human Services;

(5) Institutional care providers shall mean all facilities licensed or otherwise authorized or permitted by law to administer health care in the ordinary course of business and shall include all health care facilities defined in the Health Care Facility Licensure Act;

(6) Issuer shall mean an insurance company, fraternal benefit society, health maintenance organization, third-party administrator, or other entity reimbursing the costs of health care expenses;

(7) Medicaid shall mean the medical assistance program pursuant to the Medical Assistance Act;

(8) Medicare shall mean Title XVIII of the federal Social Security Act, 42 U.S.C. 1395 et seq., as amended; and

(9) Uniform claim form shall mean the claim forms and electronic transfer procedures developed pursuant to section 44-527.

Source: Laws 1994, LB 1222, § 54; Laws 1996, LB 1044, § 235; Laws 2000, LB 819, § 68; Laws 2006, LB 1248, § 58; Laws 2007, LB463, § 1134.
Operative date December 1, 2008.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

Medical Assistance Act, see section 68-901.

Uniform Credentialing Act, see section 38-101.

ARTICLE 7

GENERAL PROVISIONS COVERING LIFE, SICKNESS, AND ACCIDENT INSURANCE

Section.

- 44-771. Hospital, defined.
- 44-772. Substance abuse treatment center, defined.
- 44-773. Outpatient program, defined.
- 44-774. Certified, defined.
- 44-782. Health insurance provider; coverage of mental or nervous disorders; requirements.
- 44-784. Coverage for childhood immunizations; requirements.
- 44-792. Mental health conditions; terms, defined.
- 44-793. Mental health conditions; coverage; requirements.
- 44-7,102. Coverage for screening for colorectal cancer.

44-771 Hospital, defined. Hospital shall mean an institution licensed as a hospital by the Department of Health and Human Services and defined in section 71-419.

Source: Laws 1980, LB 646, § 3; Laws 1996, LB 1044, § 236; Laws 2000, LB 819, § 69; Laws 2007, LB296, § 173.
Operative date July 1, 2007.

44-772 Substance abuse treatment center, defined. Substance abuse treatment center shall mean an institution licensed as a substance abuse treatment center by the Department of Health and Human Services and defined in section 71-430, which provides a program for the inpatient or outpatient treatment of alcoholism pursuant to a written treatment plan approved and monitored by a physician and which is affiliated with a hospital under a contractual agreement with an established system for patient referral.

Source: Laws 1980, LB 646, § 4; Laws 1985, LB 209, § 1; Laws 1985, LB 253, § 1; Laws 1996, LB 1044, § 237; Laws 1996, LB 1155, § 17; Laws 2000, LB 819, § 70; Laws 2007, LB296, § 174.
Operative date July 1, 2007.

44-773 Outpatient program, defined. Outpatient program shall refer to a program which is licensed or certified by the Department of Health and Human Services or the Division of Behavioral Health of the Department of Health and Human Services to provide specified services to persons suffering from the disease of alcoholism.

Source: Laws 1980, LB 646, § 5; Laws 1995, LB 275, § 3; Laws 1996, LB 1044, § 238; Laws 1996, LB 1155, § 18; Laws 2004, LB 1083, § 96; Laws 2007, LB296, § 175.
Operative date July 1, 2007.

44-774 Certified, defined. Certified shall mean approved by the Division of Behavioral Health of the Department of Health and Human Services to render specific types or levels of care to the person suffering from the disease of alcoholism.

Source: Laws 1980, LB 646, § 6; Laws 1995, LB 275, § 4; Laws 1996, LB 1044, § 239; Laws 2004, LB 1083, § 97; Laws 2007, LB296, § 176.
Operative date July 1, 2007.

44-782 Health insurance provider; coverage of mental or nervous disorders; requirements. No insurance company, health maintenance organization, or other health insurance provider shall deny payment for treatment of mental or nervous disorders under a policy, contract, certificate, or other evidence of coverage issued or delivered in Nebraska on the basis that the hospital or state institution licensed as a hospital by the Department of Health and Human Services and defined in section 71-419 providing such treatment is publicly funded and charges are reduced or no fee is charged depending on the patient's ability to pay.

Source: Laws 1985, LB 487, § 1; Laws 1989, LB 92, § 162; Laws 1996, LB 1044, § 240; Laws 2000, LB 819, § 71; Laws 2007, LB296, § 177.
Operative date July 1, 2007.

44-784 Coverage for childhood immunizations; requirements. Notwithstanding section 44-3,131, any expense-incurred group sickness and accident insurance policy, certificate, or subscriber contract delivered, issued for delivery, or renewed after January 1, 1995, or any expense-incurred individual sickness and accident insurance policy, certificate, or subscriber contract delivered or issued for delivery after such date that provides coverage for a dependent child under six years of age shall provide coverage for childhood

immunizations. Benefits for childhood immunizations shall be exempt from any deductible provision contained in the applicable policy. Copayment, coinsurance, and dollar-limit provisions applicable to other medical services may be applied to the childhood immunization benefits. This section shall not apply to any individual or group policies that provide coverage for a specified disease, accident-only coverage, hospital indemnity coverage, medicare supplement coverage, long-term care coverage, or other limited-benefit coverage.

For purposes of this section, childhood immunizations shall mean the complete set of vaccinations for children from birth to six years of age for immunization against measles, mumps, rubella, poliomyelitis, diphtheria, pertussis, tetanus, and haemophilus influenzae type B.

Source: Laws 1994, LB 1222, § 46; Laws 2007, LB63, § 1.
Effective date September 1, 2007.

44-792 Mental health conditions; terms, defined. For purposes of sections 44-791 to 44-795:

(1) Health insurance plan means (a) any group sickness and accident insurance policy, group health maintenance organization contract, or group subscriber contract delivered, issued for delivery, or renewed in this state and (b) any self-funded employee benefit plan to the extent not preempted by federal law. Health insurance plan includes any group policy, group contract, or group plan offered or administered by the state or its political subdivisions. Health insurance plan does not include group policies providing coverage for a specified disease, accident-only coverage, hospital indemnity coverage, disability income coverage, medicare supplement coverage, long-term care coverage, or other limited-benefit coverage. Health insurance plan does not include any policy, contract, or plan covering an employer group that covers fewer than fifteen employees;

(2) Mental health condition means any condition or disorder involving mental illness that falls under any of the diagnostic categories listed in the Mental Disorders Section of the International Classification of Disease;

(3) Mental health professional means (a) a practicing physician licensed to practice medicine in this state under the Medicine and Surgery Practice Act, (b) a practicing psychologist licensed to engage in the practice of psychology in this state as provided in section 38-3111, or (c) a practicing mental health professional licensed or certified in this state as provided in the Mental Health Practice Act;

(4) Rate, term, or condition means lifetime limits, annual payment limits, and inpatient or outpatient service limits. Rate, term, or condition does not include any deductibles, copayments, or coinsurance; and

(5)(a) Serious mental illness means, prior to January 1, 2002, (i) schizophrenia, (ii) schizoaffective disorder, (iii) delusional disorder, (iv) bipolar affective disorder, (v) major depression, and (vi) obsessive compulsive disorder; and

(b) Serious mental illness means, on and after January 1, 2002, any mental health condition that current medical science affirms is caused by a biological disorder of the brain and that substantially limits the life activities of the person with the serious mental illness. Serious mental illness includes, but is not limited to (i) schizophrenia, (ii) schizoaffective disorder, (iii) delusional disorder, (iv) bipolar affective disorder, (v) major depression, and (vi) obsessive compulsive disorder.

Source: Laws 1999, LB 355, § 2; Laws 2007, LB463, § 1135.
Operative date December 1, 2008.

Cross Reference

Medicine and Surgery Practice Act, see section 38-2001.

Mental Health Practice Act, see section 38-2101.

44-793 Mental health conditions; coverage; requirements. (1) On or after January 1, 2000, notwithstanding section 44-3,131, any health insurance plan delivered, issued, or renewed in this state (a) if coverage is provided for treatment of mental health conditions other than alcohol or substance abuse, (i) shall not establish any rate, term, or condition that places a greater financial burden on an insured for access to treatment for a serious mental illness than for access to treatment for a physical health condition and (ii) if an out-of-pocket limit is established for physical health conditions, shall apply such out-of-pocket limit as a single comprehensive out-of-pocket limit for both physical health conditions and mental health conditions, or (b) if no coverage is to be provided for treatment of mental health conditions, shall provide clear and prominent notice of such noncoverage in the plan.

(2) If a health insurance plan provides coverage for serious mental illness, the health insurance plan shall cover health care rendered for treatment of serious mental illness (a) by a mental health professional, (b) by a person authorized by the rules and regulations of the Department of Health and Human Services to provide treatment for mental illness, (c) in a mental health center as defined in section 71-423, or (d) in any other health care facility licensed under the Health Care Facility Licensure Act that provides a program for the treatment of a mental health condition pursuant to a written plan. The issuer of a health insurance plan may require a health care provider under this subsection to enter into a contract as a condition of providing benefits.

(3) The Director of Insurance may disapprove any plan that the director determines to be inconsistent with the purposes of this section.

Source: Laws 1999, LB 355, § 3; Laws 2000, LB 819, § 72; Laws 2007, LB296, § 178.
Operative date July 1, 2007.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

44-7,102 Coverage for screening for colorectal cancer. (1) Notwithstanding section 44-3,131, (a) any individual or group sickness and accident insurance policy, certificate, or subscriber contract delivered, issued for delivery, or renewed in this state and any hospital, medical, or surgical expense-incurred policy, except for short-term major medical policies

of six months or less duration and policies that provide coverage for a specified disease or other limited-benefit coverage, and (b) any self-funded employee benefit plan to the extent not preempted by federal law shall include screening coverage for a colorectal cancer examination and laboratory tests for cancer for any nonsymptomatic person fifty years of age and older covered under such policy, certificate, contract, or plan. Such screening coverage shall include a maximum of one screening fecal occult blood test annually and a flexible sigmoidoscopy every five years, a colonoscopy every ten years, or a barium enema every five to ten years, or any combination, or the most reliable, medically recognized screening test available. The screenings selected shall be as deemed appropriate by a health care provider and the patient.

(2) This section does not prevent application of deductible or copayment provisions contained in the policy, certificate, contract, or employee benefit plan or require that such coverage be extended to any other procedures.

Source: Laws 2007, LB247, § 86.
Operative date June 1, 2007.

ARTICLE 11

VIATICAL SETTLEMENTS ACT

Section.

44-1102. Terms, defined.

44-1104. Disciplinary actions.

44-1102 Terms, defined. For purposes of the Viatical Settlements Act:

(1) Advertising means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet, or similar communications media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to sell a life insurance policy pursuant to a viatical settlement contract;

(2) Business of viatical settlements means an activity involved in, but not limited to, the offering, solicitation, negotiation, procurement, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, or hypothecating of viatical settlement contracts or purchase agreements;

(3) Chronically ill means (a) being unable to perform at least two activities of daily living, such as eating, toileting, transferring, bathing, dressing, or continence; (b) requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or (c) having a level of disability similar to that described in subdivision (3)(a) of this section as determined by the Department of Health and Human Services;

(4) Department means the Department of Insurance;

(5) Director means the Director of Insurance;

(6) Financing entity means an underwriter, a placement agent, a lender, a purchaser of securities, a purchaser of a policy or certificate from a viatical settlement provider, a credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract (a) whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies and (b) who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts. Financing entity does not include a nonaccredited investor or viatical settlement purchaser;

(7) Fraudulent viatical settlement act means an act or omission committed by any person who, knowingly and with intent to defraud and for the purpose of depriving another of property or for pecuniary gain, commits, or permits his or her employees or agents to commit, any of the following acts:

(a) Presenting, causing to be presented, or preparing with the knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, financing entity, insurer, insurance broker, insurance agent, or any other person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:

- (i) An application for the issuance of a viatical settlement contract or insurance policy;
 - (ii) The underwriting of a viatical settlement contract or insurance policy;
 - (iii) A claim for payment or benefit pursuant to a viatical settlement contract or insurance policy;
 - (iv) Premiums paid on an insurance policy;
 - (v) Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or insurance policy;
 - (vi) The reinstatement or conversion of an insurance policy;
 - (vii) The solicitation, offer, effectuation, or sale of a viatical settlement contract or insurance policy;
 - (viii) The issuance of written evidence of a viatical settlement contract or insurance;
 - (ix) A financing transaction; or
 - (x) Employing any device, scheme, or artifice to defraud related to viaticated policies;
- (b) In the furtherance of a fraud or to prevent the detection of a fraud:
- (i) Removing, concealing, altering, destroying, or sequestering from the director the assets or records of a licensee or other person engaged in the business of viatical settlements;
 - (ii) Misrepresenting or concealing the financial condition of a licensee, financing entity, insurer, or other person;
 - (iii) Transacting the business of viatical settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of viatical settlements; or
 - (iv) Filing with the director or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing information about a material fact from the director;

(c) Presenting, causing to be presented, or preparing with the knowledge or reason to believe that it will be presented, to or by a viatical settlement provider, viatical settlement broker, insurer, insurance agent, financing entity, viatical settlement purchaser, or any other person, in connection with a viatical settlement transaction or insurance transaction, an insurance policy, knowing the policy was fraudulently obtained by the insured, owner, or any agent thereof;

(d) Embezzlement, theft, misappropriation, or conversion of money, funds, premiums, credits, or other property of a viatical settlement provider, insurer, insured, viator, insurance policyowner, or any other person engaged in the business of viatical settlements or insurance; or

(e) Attempting to commit, assisting, aiding, or abetting in the commission of, or conspiring to commit the acts or omissions specified in this subdivision;

(8) Person means a natural person or a legal entity, including an individual, a partnership, a limited liability company, an association, a trust, or a corporation;

(9) Policy means an individual or group policy, group certificate, contract, or arrangement of life insurance affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state;

(10) Related provider trust means a titling trust or other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust shall have a written agreement with the licensed viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the director as if those records and files were maintained directly by the licensed viatical settlement provider;

(11) Special purpose entity means a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide, either directly or indirectly, access to institutional capital markets for a financing entity or licensed viatical settlement provider;

(12) Terminally ill means having an illness or sickness that can reasonably be expected to result in death in twenty-four months or less;

(13) Viatical settlement broker means a person that on behalf of a viator and for a fee, commission, or other valuable consideration offers or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers. Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator. Viatical settlement broker includes a licensed life insurance producer that meets the requirements of section 44-1103. Viatical settlement broker does not include an attorney, a certified public accountant, or a financial planner accredited by a nationally recognized accreditation agency who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser;

(14) Viatical settlement contract means a written agreement establishing the terms under which compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership or any portion of the insurance policy or certificate of insurance. A viatical settlement contract also includes a contract for a loan or other financing transaction secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy. A viatical settlement contract includes an agreement to transfer ownership or change the beneficiary designation at a later date regardless of the date that compensation is paid to the viator;

(15) Viatical settlement provider means a person, other than a viator, that enters into or effectuates a viatical settlement contract. Viatical settlement provider does not include:

(a) A bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan;

(b) The issuer of a life insurance policy providing accelerated benefits under and pursuant to the contract;

(c) An authorized or eligible insurer that provides stop-loss coverage to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust;

(d) A natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;

(e) A financing entity;

(f) A special purpose entity;

(g) A related provider trust;

(h) A viatical settlement purchaser; or

(i) An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501, or Rule 144A of the federal Securities Act of 1933, as the act existed on September 1, 2001, who purchases a viaticated policy from a viatical settlement provider;

(16) Viatical settlement purchaser means a person who gives a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy, or a person who owns or acquires or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract, for the purpose of deriving an economic benefit. Viatical settlement purchaser does not include:

(a) A licensee under the Viatical Settlements Act;

(b) An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501, or Rule 144A of the federal Securities Act of 1933, as the act existed on September 1, 2001;

(c) A financing entity;

(d) A special purpose entity; or

(e) A related provider trust;

(17) Viaticated policy means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract; and

(18) Viator means the owner of a life insurance policy or a certificate holder under a group policy who enters or seeks to enter into a viatical settlement contract. For purposes of the Viatical Settlements Act, a viator is not limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except as specifically addressed. Viator does not include:

(a) A licensee under the act;

(b) An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501, or Rule 144A of the federal Securities Act of 1933, as the act existed on September 1, 2001;

(c) A financing entity;

(d) A special purpose entity; or

(e) A related provider trust.

Source: Laws 2001, LB 52, § 28; Laws 2007, LB296, § 179.
Operative date July 1, 2007.

44-1104 Disciplinary actions. (1) The director may suspend, revoke, or refuse to issue or renew a license if the director finds that:

(a) There was any material misrepresentation in the application for the license;

(b) The applicant or licensee or any officer, partner, member, or key management personnel is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent;

(c) The viatical settlement provider demonstrates a pattern of unreasonable payments to viators;

(d) The applicant or licensee or any officer, partner, member, or key management personnel has been found guilty of, or has pleaded guilty or nolo contendere to, any felony or a Class I, II, or III misdemeanor, regardless of whether a judgment of conviction has been entered by the court;

(e) The viatical settlement provider has entered into any viatical settlement contract that has not been approved pursuant to the Viatical Settlements Act;

(f) The viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract;

(g) The licensee no longer meets the requirements for initial licensure;

(h) The viatical settlement provider has assigned, transferred, or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state, a viatical settlement purchaser, an accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501, or Rule 144A of the federal Securities Act of 1933, as the act existed on September 1, 2001, a financing entity, a special purpose entity, or a related provider trust;

(i) The applicant or licensee or any officer, partner, member, or key management personnel has violated any provision of the Viatical Settlements Act; or

(j) The licensee has failed to respond to the department within fifteen working days after receipt of an inquiry from the department.

(2) The director may suspend or revoke a license pursuant to subsection (1) of this section after notice and a hearing held in accordance with the Administrative Procedure Act.

(3) If the director denies a license application or refuses to renew a license pursuant to subsection (1) of this section, he or she shall notify the applicant or licensee of the reason for such denial or refusal of renewal. The applicant or licensee has thirty days after receipt of such notification to demand a hearing. The hearing shall be held within thirty days after receipt of such demand by the director and shall be held in accordance with the Administrative Procedure Act.

Source: Laws 2001, LB 52, § 30; Laws 2007, LB117, § 8.
Effective date September 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

ARTICLE 28

NEBRASKA HOSPITAL-MEDICAL LIABILITY ACT

Section.

44-2804. Physician, defined.

44-2835. Malpractice claim; settled or adjudicated to final judgment; report; contents; forwarded to Department of Health and Human Services.

44-2847. Medical review panel; not to consider disputed questions of law; adviser to panel.

44-2804 Physician, defined. Physician shall mean a person with an unlimited license to practice medicine in this state pursuant to the Medicine and Surgery Practice Act or a person with a license to practice osteopathic medicine or osteopathic medicine and surgery in this state pursuant to sections 38-2029 to 38-2033.

Source: Laws 1976, LB 434, § 4; Laws 1988, LB 1100, § 3; Laws 2007, LB463, § 1136.
Operative date December 1, 2008.

Cross Reference

Medicine and Surgery Practice Act, see section 38-2001.

44-2835 Malpractice claim; settled or adjudicated to final judgment; report; contents; forwarded to Department of Health and Human Services. (1) Each malpractice claim settled or adjudicated to final judgment against a health care provider under the Nebraska Hospital-Medical Liability Act shall be reported to the director by the plaintiff's attorney and by the health care provider or his or her insurer or risk manager within sixty days following final disposition of the claim. Such report to the director shall state the following:

(a) The nature of the claim;

- (b) The alleged injury and the damages asserted;
- (c) Attorney's fees and expenses incurred in connection with the claim or defense; and
- (d) The amount of any settlement or judgment.

(2) The director shall forward the name of every health care provider, except a hospital, against whom a settlement has been made or judgment has been rendered under the act to the Department of Health and Human Services for such action, if any, as it deems to be appropriate under the circumstances.

Source: Laws 1976, LB 434, § 35; Laws 1994, LB 1223, § 1; Laws 1996, LB 1044, § 241; Laws 2007, LB296, § 180.
Operative date July 1, 2007.

44-2847 Medical review panel; not to consider disputed questions of law; adviser to panel. (1) Medical review panels shall be concerned only with the determination of the questions set forth in section 44-2843. Such panels shall not consider or report on disputed questions of law.

(2) To provide for uniformity of procedure, the Department of Health and Human Services may appoint a doctor of medicine from the members of the Board of Medicine and Surgery who may sit with each panel as an observer and as an adviser on procedure but without a vote.

Source: Laws 1976, LB 434, § 47; Laws 1996, LB 1044, § 242; Laws 1999, LB 828, § 5; Laws 2000, LB 1115, § 4; Laws 2007, LB296, § 181.
Operative date July 1, 2007.

ARTICLE 29

NEBRASKA HOSPITAL AND PHYSICIANS MUTUAL INSURANCE ASSOCIATION ACT

Section.

44-2901. Hospitals; mutual insurance association; how incorporated; purpose.

44-2902. Physicians; mutual insurance association; how incorporated; purpose.

44-2904. Hospital association; qualified to become a member; when; insuring of risks; considerations.

44-2901 Hospitals; mutual insurance association; how incorporated; purpose. Any three or more hospitals as defined in section 71-419, which are located in this state and licensed by the Department of Health and Human Services, may incorporate a mutual insurance association to insure member hospitals and their officers, directors, employees, and volunteer workers against liability arising from rendering, or failing to render, professional services in the treatment or care of patients by hospitals and their agents and employees or by member physicians.

Source: Laws 1976, LB 809, § 1; Laws 1996, LB 1044, § 243; Laws 2002, LB 1062, § 10; Laws 2007, LB296, § 182.
Operative date July 1, 2007.

44-2902 Physicians; mutual insurance association; how incorporated; purpose. Any ten or more physicians licensed under the Medicine and Surgery Practice Act may incorporate a mutual insurance association to insure member physicians, their professional corporations, partnerships, limited liability companies, agents, and employees against liability arising from rendering or failing to render professional services in the treatment or care of patients.

Source: Laws 1976, LB 809, § 2; Laws 1993, LB 121, § 249; Laws 2007, LB463, § 1137. Operative date December 1, 2008.

Cross Reference

Medicine and Surgery Practice Act, see section 38-2001.

44-2904 Hospital association; qualified to become a member; when; insuring of risks; considerations. Any hospital, whether within or without the state, shall be qualified to become a member of a hospital association incorporated under sections 44-2901 to 44-2918 if it is licensed either by the Department of Health and Human Services or by the corresponding authority in the state in which the hospital is located, except that no hospital outside of this state may become a member of such an association until one year after March 31, 1976, nor may any risks outside this state be insured under the provisions of sections 44-2901 to 44-2918 until one year after the issuance of a certificate of authority to transact insurance business by the Department of Insurance. All such risks shall be subject to the prior approval of the Director of Insurance.

In determining whether or not to grant approval for the insuring of risks outside of Nebraska, the Director of Insurance shall consider the following: (1) Limits of indemnity; (2) past and present loss experience of the hospital to be insured; (3) statutes, court decisions, and the insurance climate of the jurisdiction in which the risk is located; and (4) such other information as the director may deem relevant.

Source: Laws 1976, LB 809, § 4; Laws 1996, LB 1044, § 244; Laws 2007, LB296, § 183. Operative date July 1, 2007.

ARTICLE 32

HEALTH MAINTENANCE ORGANIZATIONS

Section.

- 44-32,119. Application; transmittal to Department of Health and Human Services; duties.
- 44-32,120. Certificate of authority; issuance; conditions.
- 44-32,127. Quality assurance program; requirements.
- 44-32,128. Patient record system; requirements.
- 44-32,134. Filings; required.
- 44-32,136. Grievance procedure.
- 44-32,152. Examinations; expenses.
- 44-32,153. Certificate of authority; suspension, revocation, or denial; grounds.

- 44-32,156. Suspension, revocation, denial, or administrative penalty; order; hearing.
 44-32,157. Hearing; notice; decision; appeal.
 44-32,163. Fees; distribution.
 44-32,165. Violations; conference; requirements.
 44-32,170. Practice of medicine; laws not applicable.
 44-32,176. Department of Health and Human Services; contracts authorized.

44-32,119 Application; transmittal to Department of Health and Human Services; duties. (1) Upon receipt of an application for issuance of a certificate of authority, the Director of Insurance shall forthwith transmit copies of such application and accompanying documents to the Department of Health and Human Services.

(2) The Department of Health and Human Services shall determine whether the applicant has complied with sections 44-32,126 to 44-32,128 with respect to health care services to be furnished.

(3) Within forty-five days of receipt of the application for issuance of a certificate of authority, the Department of Health and Human Services shall certify to the Director of Insurance that the proposed health maintenance organization meets the requirements of such sections or notify the Director of Insurance that the health maintenance organization does not meet such requirements and specify in what respects it is deficient.

Source: Laws 1990, LB 1136, § 28; Laws 1996, LB 1044, § 245; Laws 2007, LB296, § 184.
 Operative date July 1, 2007.

44-32,120 Certificate of authority; issuance; conditions. The Director of Insurance shall, within forty-five days of receipt of certification or notice of deficiencies pursuant to section 44-32,119, issue a certificate of authority to any person filing a completed application upon receiving the prescribed fees and being satisfied that:

(1) The persons responsible for the conduct of the affairs of the applicant are competent, trustworthy, and possess good reputations;

(2) Any deficiencies identified by the Department of Health and Human Services have been corrected and the department has certified to the Director of Insurance that the health maintenance organization's proposed plan of operation meets the requirements of sections 44-32,126 to 44-32,128;

(3) The health maintenance organization will effectively provide or arrange for the provision of basic health care services on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for copayments or deductibles; and

(4) The health maintenance organization is in compliance with sections 44-32,138 to 44-32,148.

A certificate of authority shall be denied only after the Director of Insurance complies with the requirements of section 44-32,153.

Source: Laws 1990, LB 1136, § 29; Laws 1996, LB 1044, § 246; Laws 2007, LB296, § 185.
 Operative date July 1, 2007.

44-32,127 Quality assurance program; requirements. Each health maintenance organization shall have an ongoing, internal quality assurance program to monitor and evaluate its health care services, including primary and specialist physician services, and ancillary and preventive health care services across all institutional and noninstitutional settings. The quality assurance program shall include, but not be limited to, the following:

(1) A written statement of goals and objectives which emphasizes improved health status in evaluating the quality of care rendered to enrollees;

(2) A written quality assurance plan which describes the following:

(a) The health maintenance organization's scope and purpose in quality assurance;

(b) The organizational structure responsible for quality assurance activities;

(c) Contractual arrangements, when appropriate, for delegation of quality assurance activities;

(d) Confidentiality policies and procedures;

(e) A system of ongoing evaluation activities;

(f) A system of focused evaluation activities;

(g) A system for credentialing providers and performing peer review activities; and

(h) Duties and responsibilities of the designated physician responsible for the quality assurance activities;

(3) A written statement describing the system of ongoing quality assurance activities, including, but not limited to, the following:

(a) Problem assessment, identification, selection, and study;

(b) Corrective action, monitoring, evaluation, and reassessment; and

(c) Interpretation and analysis of patterns of care rendered to individual patients by individual providers;

(4) A written statement describing the system of focused quality assurance activities based on representative samples of the enrolled population which identifies method of topic selection, study, data collection, analysis, interpretation, and report format; and

(5) A written plan for taking appropriate corrective action whenever, as determined by the quality assurance program, inappropriate or substandard services have been provided or services which should have been furnished have not been provided.

Each health maintenance organization shall record proceedings of formal quality assurance program activities and maintain documentation in a confidential manner. Quality assurance program minutes shall be available to the Department of Health and Human Services. Each health maintenance organization shall also establish a mechanism for periodic reporting of quality assurance program activities to the governing body of the health maintenance organization, the providers, and appropriate staff.

Source: Laws 1990, LB 1136, § 36; Laws 1996, LB 1044, § 247; Laws 2007, LB296, § 186. Operative date July 1, 2007.

44-32,128 Patient record system; requirements. Each health maintenance organization shall ensure the use and maintenance of an adequate patient record system which

facilitates documentation and retrieval of clinical information for the purpose of the health maintenance organization evaluating continuity and coordination of patient care and assessing the quality of health and medical care provided to enrollees. Enrollee clinical records shall be available to the Department of Health and Human Services or an authorized designee for examination and review to ascertain compliance with section 44-32,127 or as deemed necessary by the department.

Source: Laws 1990, LB 1136, § 37; Laws 1996, LB 1044, § 248; Laws 2007, LB296, § 187.
Operative date July 1, 2007.

44-32,134 Filings; required. (1) Every health maintenance organization shall file annually, on or before March 1, an annual financial statement with the Director of Insurance, with a copy to the Department of Health and Human Services, covering the preceding calendar year. The annual financial statement shall be on forms prescribed by the Director of Insurance and shall be prepared in accordance with annual statement instructions and accounting practices and procedures manuals as prescribed by the director which conform substantially to the annual statement instructions and the Accounting Practices and Procedures Manuals of the National Association of Insurance Commissioners.

(2) Every health maintenance organization shall file annually, on or before March 1, with the Director of Insurance, with a copy to the department:

(a) A list of the providers who have executed a contract that complies with section 44-32,141; and

(b) A description of the grievance procedures, the total number of grievances handled through such procedures, a compilation of the causes underlying those grievances, and a summary of the final disposition of those grievances.

(3) Every health maintenance organization shall file annually, on or before June 1, audited financial statements with the Director of Insurance, with a copy to the department.

(4) The Director of Insurance may require such additional reports as are deemed necessary and appropriate to carry out his or her duties under the Health Maintenance Organization Act.

Source: Laws 1990, LB 1136, § 43; Laws 1996, LB 1044, § 249; Laws 2000, LB 930, § 9; Laws 2007, LB296, § 188.
Operative date July 1, 2007.

44-32,136 Grievance procedure. Each health maintenance organization shall establish and maintain a grievance procedure to provide for the resolution of grievances initiated by enrollees. The procedure shall be approved by the Director of Insurance after consultation with the Department of Health and Human Services. The Director of Insurance or the department may examine the grievance procedure. The health maintenance organization shall maintain records regarding grievances received since the date of the last examination.

Source: Laws 1990, LB 1136, § 45; Laws 1996, LB 1044, § 250; Laws 2007, LB296, § 189.
Operative date July 1, 2007.

44-32,152 Examinations; expenses. (1) The Director of Insurance may make an examination of the affairs of any health maintenance organization in accordance with the Insurers Examination Act and any provider with whom such health maintenance organization has contracts, agreements, or other arrangements as often as is reasonably necessary for the protection of the interests of the people of this state. The Department of Health and Human Services may make an examination concerning the quality assurance program of any health maintenance organization and any provider with whom such health maintenance organization has contracts, agreements, or other arrangements as often as is reasonably necessary for the protection of the interests of the people of this state but not less frequently than once every three years.

(2) Every health maintenance organization and provider shall submit its books and records for an examination and in every way facilitate the completion of the examination. For the purpose of an examination, the Director of Insurance and the Department of Health and Human Services may administer oaths to and examine the officers and agents of the health maintenance organization and the principals of a provider concerning the business. An examination shall not involve the confidential communications between physicians and patients.

(3) The expenses of an examination shall be assessed against the health maintenance organization being examined and remitted to the Director of Insurance or the Department of Health and Human Services for whom the examination is being conducted in the manner provided in the Insurers Examination Act.

(4) In lieu of an examination, the Director of Insurance or the Department of Health and Human Services may accept the report of an examination made by the insurance commissioner, insurance director, insurance superintendent, or equivalent official or director of health or equivalent official of another state.

Source: Laws 1990, LB 1136, § 61; Laws 1993, LB 583, § 90; Laws 1996, LB 1044, § 251; Laws 2007, LB296, § 190.
Operative date July 1, 2007.

Cross Reference

Insurers Examination Act, see section 44-5901.

44-32,153 Certificate of authority; suspension, revocation, or denial; grounds. If the Director of Insurance finds that any of the conditions listed in this section exist, any certificate of authority issued under the Health Maintenance Organization Act may be suspended or revoked or any application for a certificate of authority may be denied:

(1) The health maintenance organization is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in any other information submitted under section 44-32,117 unless amendments to such submissions have been filed with and approved by the director;

(2) The health maintenance organization issues an evidence of coverage or uses a schedule of charges for health care services which does not comply with the requirements of sections 44-32,129 to 44-32,133 and 44-32,149;

(3) The health maintenance organization does not provide or arrange for basic health care services;

(4) The Department of Health and Human Services certifies to the Director of Insurance that:

(a) The health maintenance organization does not meet the requirements of subsection (2) of section 44-32,119; or

(b) The health maintenance organization is unable to fulfill its obligations to furnish health care services;

(5) The health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees;

(6) The health maintenance organization has failed to correct, within the time prescribed by section 44-32,154, any deficiency occurring due to such health maintenance organization's prescribed minimum net worth being impaired;

(7) The health maintenance organization has failed to implement grievance procedures in a reasonable manner to resolve valid complaints;

(8) The health maintenance organization or any person on its behalf has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner;

(9) The continued operation of the health maintenance organization would be hazardous to its enrollees; or

(10) The health maintenance organization has otherwise failed substantially to comply with the act.

Source: Laws 1990, LB 1136, § 62; Laws 1996, LB 1044, § 252; Laws 2007, LB296, § 191.
Operative date July 1, 2007.

44-32,156 Suspension, revocation, denial, or administrative penalty; order; hearing. Suspension or revocation of a certificate of authority, the denial of an application for a certificate, or the imposition of an administrative penalty shall be by written order and shall be sent by the Director of Insurance to the health maintenance organization or applicant by certified or registered mail and to the Department of Health and Human Services. The written order shall state the grounds, charges, or conduct on which the suspension, revocation, denial, or administrative penalty is based. The health maintenance organization or applicant may in writing request a hearing within thirty days from the date of mailing of the order. If no written request is made, such order shall be final upon the expiration of thirty days.

Source: Laws 1990, LB 1136, § 65; Laws 1996, LB 1044, § 253; Laws 2007, LB296, § 192.
Operative date July 1, 2007.

44-32,157 Hearing; notice; decision; appeal. (1) If the health maintenance organization or applicant requests a hearing pursuant to section 44-32,156, the Director of Insurance shall issue a written notice of hearing and send it to the health maintenance

organization or applicant by certified or registered mail and to the Department of Health and Human Services stating:

(a) A specific time for the hearing, which may not be less than twenty nor more than thirty days after mailing of the notice of hearing; and

(b) A specific place for the hearing, which may be either in Lancaster County or in the county where the health maintenance organization's or applicant's principal place of business is located.

(2) If a hearing is requested, the chief executive officer of the Department of Health and Human Services or his or her designated representative shall be in attendance and shall participate in the proceedings. The recommendations and findings of the chief executive officer with respect to matters relating to the quality of health care services provided in connection with any decision regarding denial, suspension, or revocation of a certificate of authority shall be conclusive and binding upon the Director of Insurance.

(3) After the hearing or upon failure of the health maintenance organization to appear at such hearing, the Director of Insurance shall take whatever action he or she deems necessary based on written findings and shall mail his or her decision to the health maintenance organization or applicant with a copy to the Department of Health and Human Services. The action of the Director of Insurance and the recommendation and findings of the chief executive officer may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act. The act shall apply to proceedings under this section to the extent it is not in conflict with this section.

Source: Laws 1990, LB 1136, § 66; Laws 1996, LB 1044, § 254; Laws 2007, LB296, § 193.
Operative date July 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

44-32,163 Fees; distribution. Every health maintenance organization subject to the Health Maintenance Organization Act shall pay to the director the following fees:

(1) For filing an application for a certificate of authority or amendment thereto, three hundred dollars;

(2) For filing an amendment to the organizational documents that requires approval, twenty dollars;

(3) For filing each annual report, two hundred dollars; and

(4) For renewing a certificate of authority, one hundred dollars.

Fees charged under this section shall be distributed one-half to the Director of Insurance and one-half to the Department of Health and Human Services. All fees or other assessments transmitted to the Department of Health and Human Services pursuant to the act shall be remitted to the state treasury for credit to the Health and Human Services Cash Fund. There shall be appropriated from money credited to the fund pursuant to this section such amounts as are available to pay expenses considered incident to the administration of the act.

Source: Laws 1990, LB 1136, § 72; Laws 1991, LB 703, § 12; Laws 1996, LB 1044, § 255; Laws 2007, LB296, § 194.
Operative date July 1, 2007.

44-32,165 Violations; conference; requirements. If the Director of Insurance or the Department of Health and Human Services has for any reason cause to believe that any violation of the Health Maintenance Organization Act has occurred or is threatened, the Director of Insurance or the Department of Health and Human Services may give notice to the health maintenance organization and to the representatives or other persons who appear to be involved in such suspected violation to arrange a conference with the alleged violators or their authorized representatives for the purpose of attempting to ascertain the facts relating to such suspected violation and, if it appears that any violation has occurred or is threatened, to arrive at an adequate and effective means of correcting or preventing such violation. Proceedings under this section shall not be governed by any formal procedural requirements and may be conducted in such manner as the Director of Insurance or the Department of Health and Human Services deems appropriate under the circumstances. Unless consented to by the health maintenance organization, no rule or order may result from a conference until the requirements of this section are satisfied.

Source: Laws 1990, LB 1136, § 74; Laws 1996, LB 1044, § 256; Laws 2007, LB296, § 195.
Operative date July 1, 2007.

44-32,170 Practice of medicine; laws not applicable. Any health maintenance organization authorized under the Health Maintenance Organization Act shall not be deemed to be practicing medicine and shall be exempt from the Medicine and Surgery Practice Act relating to the practice of medicine.

Source: Laws 1990, LB 1136, § 79; Laws 2007, LB463, § 1138.
Operative date December 1, 2008.

Cross Reference

Medicine and Surgery Practice Act, see section 38-2001.

44-32,176 Department of Health and Human Services; contracts authorized. The Department of Health and Human Services, in carrying out obligations under the Health Maintenance Organization Act, may contract with qualified persons to make recommendations concerning the determinations required to be made. Such recommendations may be accepted in full or in part by the department.

Source: Laws 1990, LB 1136, § 85; Laws 1996, LB 1044, § 257; Laws 2007, LB296, § 196.
Operative date July 1, 2007.

ARTICLE 35

SERVICE CONTRACTS

(b) MOTOR VEHICLES

Section.

44-3522. Motor vehicle service contract; requirements.

(b) MOTOR VEHICLES

44-3522 Motor vehicle service contract; requirements. No motor vehicle service contract shall be issued, sold, or offered for sale in this state unless:

(1) The motor vehicle service contract provider is insured under a motor vehicle service contract reimbursement insurance policy issued by an insurer authorized to do business in this state;

(2) True and correct copies of the motor vehicle service contract and the motor vehicle service contract reimbursement insurance policy have been filed with the director; and

(3) The contract conspicuously states:

(a) That the obligations of the motor vehicle service contract provider to the service contract holder are covered under the motor vehicle service contract reimbursement insurance policy; and

(b) The name and address of the issuer of the motor vehicle service contract reimbursement insurance policy.

Source: Laws 1990, LB 1136, § 94; Laws 2006, LB 875, § 5; Laws 2007, LB188, § 1.
Effective date May 17, 2007.

ARTICLE 41

PREFERRED PROVIDERS

Section.

44-4109.01. Policies or contracts; requirements.

44-4110. Development of preferred provider organizations; conditions.

44-4109.01 Policies or contracts; requirements. Policies or contracts authorized by sections 44-4109 and 44-4110 are subject to the following requirements:

(1) A prospective insured shall be provided information about the terms and conditions of the insurance arrangement to enable him or her to make an informed decision about accepting a system of health care delivery. If the insurance arrangement is described orally to a prospective insured, the description shall use easily understood, truthful, and objective terms. All written descriptions shall be in a readable and understandable format. Specific items that shall be included are:

(a) Coverage provisions, benefits, and any exclusions by category of service, provider, or physician and, if applicable, by specific service;

(b) Any prior authorization or other review requirements, including preauthorization review, concurrent review, postservice review, and postpayment review, the manner in which an insured may obtain review of a denial of coverage, and the nature of any liability an insured may incur if the insured does not comply with the authorization requirements of the policy, contract, certificate, or other materials; and

(c) Information on the insured's financial responsibility for payment for deductibles, coinsurance, or other noncovered services;

(2) If an insurer conducts customer satisfaction surveys concerning an insurance arrangement, the results of such surveys shall be made available upon request to existing and prospective participants in insurance arrangements;

(3) The policy, contract, certificate, or other materials shall establish a mechanism by which a committee of preferred providers will be involved in reviewing and advising the insurance arrangement about medical policy, including coverage of new technology and procedures, quality and credentialing criteria, and medical management procedures;

(4) All policies or contracts shall have a system for credentialing participating preferred providers and shall allow all providers within the insurance arrangement's geographic service area to apply for such credentials periodically and not less than annually. The credentialing process:

(a) Shall begin upon application of a provider for inclusion in the policy or contract; and

(b) Shall be based solely on quality, accessibility, or economic considerations and shall be applied in accordance with reasonable business judgment.

Credentialing standards or criteria shall be made available, upon request, to providers and insureds;

(5) If the policy or contract is with an organized delivery system formed by insurers, hospitals, physicians, or allied health professionals, or a combination of such entities, participation by a provider may be limited to a participant in the organized delivery system or to providers having staff privileges at a particular health care facility;

(6) If an insurer or a participant in an insurance arrangement refuses to contract with a provider, the provider shall be permitted to appeal the adverse decision. A person conducting the provider-appeal procedure may be employed by the insurer or participant in an insurance arrangement if the person does not initially participate in the decision to take adverse action against the provider. The provider-appeal procedure shall include, but not be limited to, notice of the date and time of the hearing, a statement of the criteria or standards on which the decision was based, an opportunity for the provider to review information upon which the adverse decision was based, an opportunity for the provider to appear personally at the hearing and present any additional information, and a timely decision on the appeal;

(7) If the insurer or participant in an insurance arrangement excludes or fails to retain a provider previously contracted with to provide health care services, the provider shall be permitted to appeal the adverse decision in the same manner as set forth in subdivision (6) of this section. If the provider disagrees with the decision, the provider shall be permitted to

appeal to an appeals committee consisting of one person selected by each party to the appeal and one person mutually agreeable to both parties. The parties to the appeal shall pay to the appeal committee any costs associated with the person they select and shall share the costs of the person mutually agreeable to both parties, which costs shall not be recoverable by the other party;

(8) Prior to initiation of a proceeding to terminate a provider's participation, the provider shall be given an opportunity to enter into and complete a corrective action plan, except in cases of fraud or imminent harm to patient health or when the provider's ability to provide services has been restricted by an action, including probation or any compliance agreements, by the Department of Health and Human Services or other governmental agency; and

(9) Policies and contracts shall not exclude providers with practices containing a substantial number of patients having severe or expensive medical conditions, except that this section shall not prohibit plans from excluding providers who fail to meet the insurance arrangement's criteria for quality, accessibility, or economic considerations.

Source: Laws 1995, LB 473, § 4; Laws 1996, LB 1044, § 258; Laws 2007, LB296, § 197.
Operative date July 1, 2007.

44-4110 Development of preferred provider organizations; conditions. All providers of health services in Nebraska may develop preferred provider organizations and contract with insurers and participants in insurance arrangements if such providers have met all licensure and certification requirements necessary to practice a specific profession or to operate a specific health care facility pursuant to the Health Care Facility Licensure Act and the Uniform Credentialing Act. An organization of preferred providers may limit itself to one or more specific professions or specialties within a profession, as defined in the Uniform Credentialing Act, and may limit the number of participating providers to that required to adequately meet the need for its particular program and the purpose of sections 44-4101 to 44-4113 to furnish health services in a manner reasonably expected to contain or lower costs.

Source: Laws 1984, LB 902, § 10; Laws 1995, LB 473, § 6; Laws 2007, LB463, § 1139.
Operative date December 1, 2008.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

Uniform Credentialing Act, see section 38-101.

ARTICLE 45

LONG-TERM CARE INSURANCE ACT

Section.

44-4501. Act, how cited.

44-4519. Rules and regulations.

44-4521. Sale, solicitation, or negotiation of long-term care insurance; license required; training course; insurer; duties; records.

44-4501 Act, how cited. Sections 44-4501 to 44-4521 shall be known and may be cited as the Long-Term Care Insurance Act.

Source: Laws 1987, LB 416, § 1; Laws 1992, LB 1006, § 44; Laws 1999, LB 323, § 1; Laws 2007, LB117, § 9.
Effective date September 1, 2007.

44-4519 Rules and regulations. The director may adopt and promulgate rules and regulations to carry out the Long-Term Care Insurance Act, including minimum standards for insurance producer training.

Source: Laws 1992, LB 1006, § 53; Laws 2007, LB117, § 11.
Effective date September 1, 2007.

44-4521 Sale, solicitation, or negotiation of long-term care insurance; license required; training course; insurer; duties; records. (1) An individual may not sell, solicit, or negotiate long-term care insurance unless the individual is licensed as an insurance producer for health or sickness and accident insurance and has completed a one-time training course on or before August 1, 2008, and ongoing training every twenty-four months thereafter. All training shall meet the requirements of subsection (2) of this section.

(2) The one-time training course required by subsection (1) of this section shall be no less than eight hours in length, and the required ongoing training shall be no less than four hours in length. All training required under subsection (1) of this section shall consist of topics related to long-term care insurance, long-term care services, and, if applicable, qualified state long-term insurance partnership programs, including, but not limited to:

(a) State and federal regulations and requirements and the relationship between qualified state long-term care insurance partnership programs and other public and private coverage of long-term care services, including medicaid;

(b) Available long-term care services and providers;

(c) Changes or improvements in long-term care services or providers;

(d) Alternatives to the purchase of private long-term care insurance;

(e) The effect of inflation on benefits and the importance of inflation protection; and

(f) Consumer suitability standards and guidelines.

Training required by subsection (1) of this section shall not include any sales or marketing information, materials, or training other than those required by state or federal law.

(3)(a) Insurers subject to the Long-Term Care Insurance Act shall obtain verification that the insurance producer receives training required by subsection (1) of this section before a producer is permitted to sell, solicit, or negotiate the insurer's long-term care insurance products. Records shall be maintained in accordance with section 44-5905 and shall be made available to the director upon request.

(b) Insurers subject to the act shall maintain records with respect to the training of its producers concerning the distribution of its partnership policies that will allow the director to provide assurance to the Department of Health and Human Services Finance and Support

that producers have received the training required by subsection (1) of this section and that producers have demonstrated an understanding of the partnership policies and their relationship to public and private coverage of long-term care, including medicaid, in this state. These records shall be maintained in accordance with section 44-5905 and shall be made available to the director upon request.

(4) The satisfaction of the training requirements in any state shall be deemed to satisfy the training requirements of the State of Nebraska.

(5) The training requirements of subsection (1) of this section may be approved as continuing education courses pursuant to sections 44-3901 to 44-3913.

Source: Laws 2007, LB117, § 10.
Effective date September 1, 2007.

ARTICLE 51

INVESTMENTS

Section.

44-5103. Terms, defined.

44-5110. Participation.

44-5111. Computation of investment limitations.

44-5120. Lending of securities.

44-5137. Foreign securities.

44-5140. Preferred stock.

44-5141. Common stock; equity interests.

44-5152. Securities Valuation Office; designated obligations; limitation.

44-5153. Additional authorized investments.

44-5103 Terms, defined. For purposes of the Insurers Investment Act:

(1) Admitted assets means the investments authorized under the act and stated at values at which they are permitted to be reported in the insurer's financial statement filed under section 44-322, except that admitted assets does not include assets of separate accounts, the investments of which are not subject to the act;

(2) Agent means a national bank, state bank, trust company, or broker-dealer that maintains an account in its name in a clearing corporation or that is a member of the Federal Reserve System and through which a custodian participates in a clearing corporation including the Treasury/Reserve Automated Debt Entry Securities System and Treasury Direct system, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country or securities used to meet deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, agent may include a corporation that is organized or existing under the laws of a foreign country and that is legally qualified under those laws to accept custody of securities;

(3) Business entity means a sole proprietorship, corporation, limited liability company, association, partnership, limited liability partnership, joint-stock company, joint venture,

mutual fund, trust, joint tenancy, or other similar form of business organization, whether organized for profit or not for profit;

(4) Clearing corporation means a clearing corporation as defined in subdivision (a)(5) of section 8-102, Uniform Commercial Code, that is organized for the purpose of effecting transactions in securities by computerized book-entry, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, clearing corporation may include a corporation that is organized or existing under the laws of a foreign country and which is legally qualified under those laws to effect transactions in securities by computerized book-entry. Clearing corporation also includes Treasury/Reserve Automated Debt Entry Securities System and Treasury Direct system;

(5) Custodian means:

(a) A national bank, state bank, or trust company that shall at all times during which it acts as a custodian pursuant to the Insurers Investment Act be no less than adequately capitalized as determined by the standards adopted by United States banking regulators and that is regulated by either state banking laws or is a member of the Federal Reserve System and that is legally qualified to accept custody of securities in accordance with the standards set forth below, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country, or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, custodian may include a bank or trust company incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency thereof that shall at all times during which it acts as a custodian pursuant to the Insurers Investment Act be no less than adequately capitalized as determined by the standards adopted by international banking authorities and that is legally qualified to accept custody of securities; or

(b) A broker-dealer that shall be registered with and subject to jurisdiction of the Securities and Exchange Commission, maintains membership in the Securities Investor Protection Corporation, and has a tangible net worth equal to or greater than two hundred fifty million dollars;

(6) Custodied securities means securities held by the custodian or its agent or in a clearing corporation, including the Treasury/Reserve Automated Debt Entry Securities System and Treasury Direct system;

(7) Direct when used in connection with the term obligation means that the designated obligor is primarily liable on the instrument representing the obligation;

(8) Director means the Director of Insurance;

(9) Insurer is defined as provided in section 44-103, and unless the context otherwise requires, insurer means domestic insurer;

(10) Mortgage means a consensual interest created by a real estate mortgage, a trust deed on real estate, or a similar instrument;

(11) Obligation means a bond, debenture, note, or other evidence of indebtedness or a participation, certificate, or other evidence of an interest in any of the foregoing;

(12) Policyholders surplus means the amount obtained by subtracting from the admitted assets (a) actual liabilities and (b) any and all reserves which by law must be maintained. In the case of a stock insurer, the policyholders surplus also includes the paid-up and issued capital stock;

(13) Securities Valuation Office means the Securities Valuation Office of the National Association of Insurance Commissioners or any successor office established by the National Association of Insurance Commissioners;

(14) Security certificate has the same meaning as defined in subdivision (a)(16) of section 8-102, Uniform Commercial Code;

(15) State means any state of the United States, the District of Columbia, or any territory organized by Congress;

(16) Tangible net worth means shareholders equity, less intangible assets, as reported in the broker-dealer's most recent Annual or Transition Report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934, S.E.C. Form 10-K, filed with the Securities and Exchange Commission; and

(17) Treasury/Reserve Automated Debt Entry Securities System and Treasury Direct system mean the book-entry securities systems established pursuant to 5 U.S.C. 301, 12 U.S.C. 391, and 31 U.S.C. 3101 et seq. The operation of the systems are subject to 31 C.F.R. part 357 et seq.

Source: Laws 1991, LB 237, § 3; Laws 1997, LB 273, § 2; Laws 1999, LB 259, § 11; Laws 2005, LB 119, § 13; Laws 2007, LB117, § 12.
Effective date September 1, 2007.

44-5110 Participation. (1) An insurer may invest in an individual interest of a pool of obligations or a fractional interest of a single obligation if:

(a) The certificate of participation or interest or the confirmation of participation or interest in the investment is issued in the name of the insurer, a custodian bank, or the nominee of either; and

(b) The certificate or confirmation, if held by a custodian bank, is kept separate and apart from the investment of others so that at all times the participation or interest may be identified as belonging solely to the insurer making the investment.

(2) If an investment is not evidenced by a certificate, adequate evidence of the insurer's investment shall be obtained from the issuer or its transfer or recording agent and retained by the insurer, custodian bank, or clearing corporation except as provided in subdivision (2) of section 44-5109. For purposes of this subsection, adequate evidence shall mean a written receipt or other verification issued by the depository, issuer, or custodian bank which shows that the investment is held for the insurer. Transfers of ownership or investments held as described in subdivisions (1)(c) and (2) of section 44-5109 and this section may be evidenced by a bookkeeping entry on the books of the issuer of the investment, its transfer or recording

agent, or the clearing corporation without physical delivery of certificates, if any, evidencing the insurer's investment.

(3) Any investment made pursuant to this section shall also conform with the following:

(a) The investment in which the interest is purchased shall be authorized under the Insurers Investment Act; and

(b) The insurer's pro rata interest in the investment shall be in the same percentage as the par amount of its interest bears to the outstanding par amount of the investment at the time of purchase.

(4) An investment may be authorized under this section although its interest does not include the right to exercise the investor's rights or enforce the investor's remedies according to the provisions of the issue.

(5) Any investment made pursuant to this section shall be purchased pursuant to a written participation agreement.

Source: Laws 1991, LB 237, § 10; Laws 1997, LB 273, § 5; Laws 2003, LB 216, § 13; Laws 2007, LB117, § 13.
Effective date September 1, 2007.

44-5111 Computation of investment limitations. Any investment limitation in the Insurers Investment Act based upon the amount of the insurer's admitted assets or policyholders surplus shall relate to admitted assets or policyholders surplus as shown by the most recent financial statement filed by the insurer pursuant to section 44-322 unless the insurer's admitted assets or policyholders surplus is revised as a result of an examination conducted pursuant to the Insurers Examination Act, in which case the results of the examination shall control. Except as otherwise provided by law, an investment shall be measured by the lesser of actual cost or admitted value at the time of acquisition. If there is no actual cost at the time of acquisition, the investment shall be measured at the lesser of fair value or admitted value.

For purposes of this section, actual cost means the total amount invested, expended, or which should be reasonably anticipated to be invested or expended in the acquisition or organization of any investment, insurer, or subsidiary, including all organizational expenses or contributions to capital and surplus whether or not represented by the purchase of capital stock or issuance of other securities.

Source: Laws 1991, LB 237, § 11; Laws 1993, LB 583, § 111; Laws 2007, LB117, § 14.
Effective date September 1, 2007.

Cross Reference

Insurers Examination Act, see section 44-5901.

44-5120 Lending of securities. (1) An insurer may lend its securities if:

(a) The securities are created or existing under the laws of the United States and, simultaneously with the delivery of the loaned securities, the insurer receives collateral from the borrower consisting of cash or securities backed by the full faith and credit of the United

States or an agency or instrumentality of the United States, except that any securities provided as collateral shall not be of lesser quality than the quality of the loaned securities. Any investment made by an insurer with cash received as collateral for loaned securities shall be made in the same kinds, classes, and investment grades as those authorized under the Insurers Investment Act and in a manner that recognizes the liquidity needs of the transaction or is used by the insurer for its general corporate purposes. The securities provided as collateral shall have a market value when the loan is made of at least one hundred two percent of the market value of the loaned securities;

(b) The securities are created or existing under the laws of Canada or are securities described in section 44-5137 and, simultaneously with the delivery of the loaned securities, the insurer receives collateral from the borrower consisting of cash or securities backed by the full faith and credit of the foreign country, except that any securities provided as collateral shall not be of lesser quality than the quality of the loaned securities. Any investment made by an insurer with cash received as collateral for loaned securities shall be made in the same kinds, classes, and investment grades as those authorized under the Insurers Investment Act and in a manner that recognizes the liquidity needs of the transaction or is used by the insurer for its general corporate purposes. The securities provided as collateral shall have a market value when the loan is made of at least one hundred two percent of the market value of the loaned securities;

(c) Prior to the loan, the borrower or any indemnifying party furnishes the insurer with or the insurer otherwise obtains the most recent financial statement of the borrower or any indemnifying party;

(d) The insurer receives a reasonable fee related to the market value of the loaned securities and to the term of the loan;

(e) The loan is made pursuant to a written loan agreement; and

(f) The borrower is required to furnish by the close of each business day during the term of the loan a report of the market value of all collateral and the market value of all loaned securities as of the close of trading on the previous business day. If at the close of any business day the market value of the collateral for any loan outstanding to a borrower is less than one hundred percent of the market value of the loaned securities, the borrower shall deliver by the close of the next business day an additional amount of cash or securities. The market value of the additional securities, together with the market value of all previously delivered collateral, shall equal at least one hundred two percent of the market value of the loaned securities for that loan.

(2) For purposes of this section, market value includes accrued interest.

(3) An insurer shall effect securities lending only through the services of a custodian bank or similar entity as approved by the director.

(4) An insurer's investments authorized under this section shall not exceed ten percent of its admitted assets.

Source: Laws 1991, LB 237, § 20; Laws 1997, LB 273, § 10; Laws 2002, LB 1139, § 28; Laws 2003, LB 216, § 15; Laws 2007, LB117, § 15.
Effective date September 1, 2007.

44-5137 Foreign securities. (1) An insurer may invest in securities or other investments (a) issued in, (b) located in, (c) denominated in the currency of, (d) whose ultimate payment amounts of principal or interest are subject to fluctuations in the currency of, or (e) whose obligors are domiciled in countries other than the United States or Canada, which are substantially of the same kinds and classes as those authorized for investment under the Insurers Investment Act.

(2) Subject to the limitations in subsection (3) of this section:

(a) An insurer's investments authorized under subsection (1) of this section in any one foreign jurisdiction whose sovereign debt has a 1 designation from the Securities Valuation Office shall not exceed ten percent of the insurer's admitted assets;

(b) An insurer's investments authorized under subsection (1) of this section in any one foreign jurisdiction whose sovereign debt has a 2 or 3 designation from the Securities Valuation Office shall not exceed five percent of the insurer's admitted assets;

(c) An insurer's investments authorized under subsection (1) of this section in any one foreign jurisdiction whose sovereign debt has a 4, 5, or 6 designation from the Securities Valuation Office shall not exceed three percent of the insurer's admitted assets;

(d) An insurer's investments authorized under subsection (1) of this section denominated in any one foreign currency shall not exceed two percent of the insurer's admitted assets;

(e) An insurer's investments authorized under subsection (1) of this section denominated in foreign currencies, in the aggregate, shall not exceed five percent of the insurer's admitted assets; and

(f) An insurer's investments authorized under subsection (1) of this section shall not be considered denominated in a foreign currency if the acquiring insurer enters into one or more contracts in transactions permitted under section 44-5149 to exchange all payments made on the foreign currency denominated investments for United States currency at a rate which effectively insulates the investment cash flows against future changes in currency exchange rates during the period the contract or contracts are in effect.

(3) An insurer's investments authorized under subsection (1) of this section shall not exceed, in the aggregate, twenty percent of its admitted assets.

(4) An insurer which is authorized to do business in a foreign country or which has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in a foreign country may, in addition to the investments authorized by subsection (1) of this section, invest in securities and investments (a) issued in, (b) located in, (c) denominated in the currency of, (d) whose ultimate payment amounts of principal and interest are subject to fluctuations in the currency of, or (e) whose obligors are domiciled in such foreign countries, which are substantially of the same kinds and classes as those authorized for investment under the act.

(5) An insurer's investments authorized under subsection (4) of this section and cash in the currency of such country which is at any time held by such insurer, in the aggregate, shall not exceed the greater of (a) one and one-half times the amount of its reserves and other

obligations under such contracts or (b) the amount which such insurer is required by law to invest in such country.

(6) Any investment in debt obligations authorized under this section shall have a minimum quality rating as described in subdivision (2) of section 44-5112.

(7) An insurer's investments made under this section shall be aggregated with investments of the same kinds and classes made under the Insurers Investment Act except section 44-5153 for purposes of determining compliance with the limitations contained in other sections.

Source: Laws 1991, LB 237, § 37; Laws 1997, LB 273, § 18; Laws 2007, LB117, § 16.
Effective date September 1, 2007.

Cross Reference

Bonds of the State of Israel, see section 8-148.03.

44-5140 Preferred stock. (1) An insurer may invest in the preferred stock of any corporation which:

(a) Has retained earnings of not less than one million dollars;

(b) Has earned and paid regular dividends at the regular prescribed rate each year upon its preferred stock, if any is or has been outstanding, for not less than five years immediately preceding the purchase of such preferred stock or during such part of such five-year period as it has had preferred stock outstanding; and

(c) Has had no material defaults in principal payments of or interest on any obligations of such corporation and its subsidiaries having a priority equal to or higher than those purchased during the period of five years immediately preceding the date of acquisition or, if outstanding for less than five years, at any time since such obligations were issued.

The earnings of and the regular dividends paid by all predecessor, merged, consolidated, or purchased corporations may be included through the use of consolidated or pro forma statements.

(2) Except as authorized under the Insurance Holding Company System Act, an insurer shall not own more than five percent of the total issued shares of stock of any corporation other than an insurer.

(3) A life insurer's investments authorized under this section shall not exceed the greater of twenty-five percent of its admitted assets or one hundred percent of its policyholders surplus, nor shall a life insurer's investments authorized under this section that are not rated P-1 or P-2 by the Securities Valuation Office exceed ten percent of its admitted assets.

Source: Laws 1991, LB 237, § 40; Laws 2007, LB117, § 17.
Effective date September 1, 2007.

Cross Reference

Insurance Holding Company System Act, see section 44-2120.

44-5141 Common stock; equity interests. (1) An insurer may invest in the common stock or rights to purchase or sell common stock of any corporation which has retained earnings of not less than one million dollars, except that an investment may be made in any

corporation having a majority of its operations in this state which has retained earnings of not less than two hundred fifty thousand dollars. The earnings of all predecessor, merged, consolidated, or purchased corporations shall be included through the use of consolidated or pro forma statements.

(2)(a) An insurer may invest in equity interests or rights to purchase or sell equity interests in business entities other than general partnerships.

(b)(i) A life insurer's investments authorized under this subsection shall not exceed fifty percent of its policyholders surplus.

(ii) A life insurer shall not invest under this subsection in any investment which the life insurer may invest in under section 44-5140 or 44-5144 or subsection (1) of this section.

(3) Except as authorized under the Insurance Holding Company System Act, an insurer shall not invest in more than ten percent of the total equity interests in any business entity other than an insurer.

(4) A life insurer's investments authorized under this section shall not exceed one hundred percent of its policyholders surplus.

Source: Laws 1991, LB 237, § 41; Laws 1997, LB 273, § 20; Laws 2007, LB117, § 18.
Effective date September 1, 2007.

Cross Reference

Insurance Holding Company System Act, see section 44-2120.

44-5152 Securities Valuation Office; designated obligations; limitation. (1) In addition to investments otherwise authorized under the Insurers Investment Act and subject to the limitations in subsections (2) and (3) of this section, an insurer may invest in obligations having 3, 4, 5, and 6 designations from the Securities Valuation Office.

(2) Subject to the limitation in subsection (3) of this section, an insurer shall not acquire, directly or indirectly through an investment subsidiary, investments in obligations:

(a) Having a 4 designation from the Securities Valuation Office if, as a result of and giving effect to the investment, the aggregate amount of such investments would exceed four percent of the insurer's admitted assets;

(b) Having a 5 designation from the Securities Valuation Office if, as a result of and giving effect to the investment, the aggregate amount of such investments would exceed two percent of the insurer's admitted assets; and

(c) Having a 6 designation from the Securities Valuation Office if, as a result of and giving effect to the investment, the aggregate amount of such investments would exceed one percent of the insurer's admitted assets.

(3) An insurer shall not acquire, directly or indirectly through an investment subsidiary, investments under this section if, as a result of and giving effect to the investment, the aggregate amount would exceed fifteen percent of the insurer's admitted assets.

Source: Laws 1991, LB 237, § 52; Laws 1997, LB 273, § 24; Laws 2007, LB117, § 19.
Effective date September 1, 2007.

44-5153 Additional authorized investments. (1)(a)(i) A life insurer may make investments not otherwise authorized under the Insurers Investment Act in an amount, in the aggregate, not exceeding the lesser of five percent of its admitted assets or one hundred percent of its policyholders surplus.

(ii) An insurer other than a life insurer may make investments not otherwise authorized under the act in an amount, in the aggregate, not exceeding the lesser of twenty-five percent of the amount by which its admitted assets exceed its total liabilities, excluding capital, or five percent of its admitted assets.

(b) Investments authorized under this subsection shall not include obligations having 3, 4, 5, and 6 designations from the Securities Valuation Office.

(2)(a) In addition to the provisions of subdivision (1)(a)(i) of this section, a life insurer may make investments not otherwise authorized under the act in an amount not exceeding that portion of its policyholders surplus which is in excess of ten percent of its admitted assets.

(b) In addition to the provisions of subdivisions (1)(a)(ii) and (b) of this section, an insurer other than a life insurer may make investments not otherwise authorized under the act in an amount not exceeding that portion of its policyholders surplus which is in excess of fifty percent of its annual net written premiums as shown by the most recent annual financial statement filed by the insurer pursuant to section 44-322.

(3) Investments authorized under subsection (1) or (2) of this section shall not include insurance agents' balances or amounts advanced to or owing by insurance agents.

(4) The limitations set forth in this section shall be applied at the time the investment in question is made and at the end of each calendar quarter. An insurer's investment, which at the time of its acquisition was authorized only under the provisions of this section but which has subsequently and while held by such insurer become of such character as to be authorized elsewhere under the act, shall not be included in determining the amount of such insurer's investments, in the aggregate, authorized under this section, and investments otherwise authorized under the act at the time of their acquisition shall not be included in making such determination.

(5) Derivative instruments described in subsections (1), (2), and (3) of section 44-5149 shall not be authorized investments under this section.

Source: Laws 1991, LB 237, § 53; Laws 1997, LB 273, § 25; Laws 2005, LB 119, § 18; Laws 2007, LB117, § 20.
Effective date September 1, 2007.

ARTICLE 55

SURPLUS LINES INSURANCE

Section.

44-5501. Act, how cited.

44-5502. Terms, defined.

44-5504. Nonadmitted insurer; surplus lines license; application; fee; expiration; renewal.

44-5515. Taxes; form.

44-5501 Act, how cited. Sections 44-5501 to 44-5515 shall be known and may be cited as the Surplus Lines Insurance Act.

Source: Laws 1992, LB 1006, § 1; Laws 2007, LB117, § 21.
Effective date September 1, 2007.

44-5502 Terms, defined. For purposes of the Surplus Lines Insurance Act:

- (1) Department means the Department of Insurance;
- (2) Director means the Director of Insurance;
- (3) Insurer has the same meaning as in section 44-103;
- (4) Foreign, alien, admitted, and nonadmitted, when referring to insurers, has the same meanings as in section 44-103; and

(5) Industrial insured means an insured that:

(a) Procures the insurance of any risk or risks other than sickness and accident insurance and life and annuity contracts, has fifty full-time employees, and has aggregate annual premiums for insurance on all risks other than workers' compensation insurance that total at least one hundred thousand dollars; and

(b) Uses, to procure such insurance, the services of a salaried full-time employee who counsels or advises his or her employer regarding the insurance interests of the employer or the employer's subsidiaries or business affiliates, if the employee does not sell or solicit insurance or receive a commission.

Source: Laws 1992, LB 1006, § 2; Laws 2007, LB117, § 22.
Effective date September 1, 2007.

44-5504 Nonadmitted insurer; surplus lines license; application; fee; expiration; renewal. (1) No person, other than an industrial insured, shall place, procure, or effect insurance upon any risk located in this state in any nonadmitted insurer until such person has first been issued a surplus lines license from the department as provided in section 44-5503.

(2) Application for a surplus lines license shall be made to the department on forms designated and furnished by the department and shall be accompanied by a license fee as established by the director not to exceed two hundred fifty dollars for each individual and corporate surplus lines license.

(3)(a) All corporate surplus lines licenses shall expire on April 30 of each year, and all individual surplus lines licenses shall expire on the licensee's birthday in the first year after issuance in which his or her age is divisible by two, and all individual surplus lines licenses may be renewed within the ninety-day period before their expiration dates and all individual surplus lines licenses also may be renewed within the thirty-day period after their expiration dates upon payment of a late renewal fee as established by the director not to exceed two hundred dollars in addition to the applicable fee otherwise required for renewal of individual surplus lines licenses as established by the director pursuant to subsection (2) of

this section. All individual surplus lines licenses renewed within the thirty-day period after their expiration dates pursuant to this subdivision shall be deemed to have been renewed before their expiration dates. The department shall establish procedures for the renewal of surplus lines licenses.

(b) Every licensee shall notify the department within thirty days of any changes in the licensee's residential or business address.

Source: Laws 1913, c. 154, § 25, p. 408; R.S.1913, § 3161; Laws 1919, c. 190, tit. V, art. III, § 18, p. 587; C.S.1922, § 7762; C.S.1929, § 44-218; R.S.1943, § 44-140; Laws 1978, LB 836, § 2; Laws 1984, LB 801, § 47; Laws 1989, LB 92, § 30; R.S.Supp.,1990, § 44-140; Laws 1992, LB 1006, § 4; Laws 1999, LB 260, § 15; Laws 2002, LB 1139, § 37; Laws 2007, LB117, § 23.
Effective date September 1, 2007.

44-5515 Taxes; form. Every industrial insured shall annually, on or before February 15, pay to the department a tax of three percent on the total gross amount of insurance premiums for policies procured through nonadmitted insurers. Every industrial insured shall pay the fire insurance tax prescribed in section 81-523. The department shall prescribe a form for an industrial insured tax filing.

Source: Laws 2007, LB117, § 24.
Effective date September 1, 2007.

ARTICLE 70

HEALTH CARE PROFESSIONAL CREDENTIALING VERIFICATION ACT

Section.

44-7006. Health carrier; credentialing verification duties.

44-7006 Health carrier; credentialing verification duties. (1) A health carrier shall:

(a) Establish written policies and procedures for credentialing verification of all health care professionals with whom the health carrier contracts and apply these standards consistently;

(b) Verify the credentials of a health care professional before entering into a contract with that health care professional. The medical director of the health carrier or other designated health care professional shall have responsibility for, and shall participate in, credentialing verification;

(c) Establish a credentialing verification committee consisting of licensed physicians and other health care professionals to review credentialing verification information and supporting documents and make decisions regarding credentialing verification;

(d) Make available for review by the applying health care professional upon written request all application and credentialing verification policies and procedures;

(e) Retain all records and documents relating to a health care professional's credentialing verification process for at least five years; and

(f) Keep confidential all information obtained in the credentialing verification process except as otherwise provided by law.

(2) Nothing in the Health Care Professional Credentialing Verification Act shall be construed to require a health carrier to select a provider as a participating provider solely because the provider meets the health carrier's credentialing verification standards or to prevent a health carrier from utilizing separate or additional criteria in selecting the health care professionals with whom it contracts.

(3) The policies and procedures for credentialing verification shall be available for review by the director, and, in the case of a health maintenance organization, shall also be available for review by the chief medical officer, if one is appointed pursuant to section 81-3115, and if not, then the Director of Public Health.

Source: Laws 1998, LB 1162, § 31; Laws 2007, LB296, § 198.
Operative date July 1, 2007.

ARTICLE 71

MANAGED CARE PLAN NETWORK ADEQUACY ACT

Section.

44-7107. Intermediaries.

44-7107 Intermediaries. (1) A contract between a health carrier and an intermediary shall satisfy all the requirements contained in this section.

(2)(a) Intermediaries and participating providers with whom they contract shall comply with all the applicable requirements of section 44-7106.

(b) A health carrier's statutory responsibility to monitor the offering of covered benefits to covered persons shall not be delegated or assigned to the intermediary.

(c) A health carrier shall have the right to approve or disapprove participation status of a subcontracted provider in its own or a contracted network for the purpose of delivering covered benefits to the health carrier's covered persons.

(d) A health carrier shall maintain copies of all intermediary health care subcontracts at its principal place of business in the state, or ensure that it has access to all intermediary subcontracts, including the right to make copies to facilitate regulatory review, upon twenty days' prior written notice from the health carrier. A health carrier may meet the requirements of this subdivision by maintaining a copy of the intermediary health care subcontract forms used by its intermediaries, and if the health carrier does so, the health carrier shall also maintain a copy of any portion of an intermediary health care subcontract which substantially differs from the intermediary health care subcontract form in subject areas other than reimbursement.

(e) If applicable, an intermediary shall transmit utilization documentation and claims paid documentation to the health carrier. The health carrier shall monitor the timeliness and appropriateness of payments made to providers and health care services received by covered persons.

(f) If applicable, an intermediary shall maintain the books, records, financial information, and documentation of health care services provided to covered persons at its principal place of business in the state and preserve them for five years in a manner that facilitates regulatory review.

(g) An intermediary shall allow the director and a health maintenance organization shall allow the director and the Department of Health and Human Services access to the intermediary's books, records, financial information, and any documentation of health care services provided to covered persons, as necessary to determine compliance with the Managed Care Plan Network Adequacy Act.

(h) A health carrier shall have the right, in the event of the intermediary's insolvency, to require the assignment to the health carrier of the provisions of a provider's contract addressing the provider's obligation to furnish covered services.

Source: Laws 1998, LB 1162, § 45; Laws 2007, LB296, § 199.
Operative date July 1, 2007.

ARTICLE 72

QUALITY ASSESSMENT AND IMPROVEMENT ACT

Section.

44-7206. Quality assessment; infrastructure and disclosure systems.

44-7206 Quality assessment; infrastructure and disclosure systems. A health carrier that provides managed care plans shall develop and maintain the infrastructure and disclosure systems necessary to measure the quality of health care services provided to covered persons on a regular basis and appropriate to the types of managed care plans offered by the health carrier. A health carrier shall:

(1) Establish a system designed to assess the quality of health care provided to covered persons and appropriate to the types of managed care plans offered by the health carrier. The system shall include systematic collection, analysis, and reporting of relevant data in accordance with statutory and regulatory requirements;

(2) Communicate findings in a timely manner to applicable regulatory agencies, providers, and consumers as provided in section 44-7209;

(3) Report to the appropriate licensing authority any persistent pattern of problematic care provided by a provider that is sufficient to cause the health carrier to terminate or suspend contractual arrangements with the provider. A health carrier acting in good faith shall be granted immunity from any cause of action under state law in making the report; and

(4) Develop a written description of the quality assessment program available for review by the director, which shall include a signed certification by a corporate officer of the health carrier that the filing meets the requirements of the Quality Assessment and Improvement Act. The written description of the quality assessment program of a health maintenance organization shall also be available for review by the Department of Health and Human Services.

Source: Laws 1998, LB 1162, § 56; Laws 2007, LB296, § 200.
Operative date July 1, 2007.

ARTICLE 73

HEALTH CARRIER GRIEVANCE PROCEDURE ACT

Section.

44-7306. Grievance register.

44-7306 Grievance register. (1) A health carrier shall maintain in a grievance register written records to document all grievances received during a calendar year. A request for a first-level review of an adverse determination shall be processed in compliance with section 44-7308 but not considered a grievance for purposes of the grievance register unless such request includes a written grievance. A request for a second-level review of an adverse determination shall be considered a grievance for purposes of the grievance register. For each grievance required to be recorded in the grievance register, the grievance register shall contain, at a minimum, the following information:

- (a) A general description of the reason for the grievance;
- (b) Date received;
- (c) Date of each review or hearing;
- (d) Resolution at each level of the grievance;
- (e) Date of resolution at each level; and
- (f) Name of the covered person for whom the grievance was filed.

(2) The grievance register shall be maintained in a manner that is reasonably clear and accessible to the director. A grievance register maintained by a health maintenance organization shall also be accessible to the Department of Health and Human Services.

(3) A health carrier shall retain the grievance register compiled for a calendar year for the longer of three years or until the director has adopted a final report of an examination that contains a review of the grievance register for that calendar year.

Source: Laws 1998, LB 1162, § 71; Laws 2007, LB296, § 201.
Operative date July 1, 2007.

ARTICLE 75

PROPERTY AND CASUALTY INSURANCE RATE AND FORM ACT

Section.

44-7504. Terms, defined.

44-7504 Terms, defined. For purposes of the Property and Casualty Insurance Rate and Form Act:

(1) Advisory organization means any entity, including its affiliates or subsidiaries, which (a) has majority ownership or control by two or more insurers and assists two or more insurers in activities related to ratemaking, the promulgation of policy forms, or related matters or (b) makes the same prospective loss cost or policy form filings on behalf of or to be available for two or more insurers. For purposes of this subdivision, a group of insurers under common ownership or control shall be considered a single insurer. Advisory organization does not include joint reinsurance pools, joint underwriting pools, or insurers engaged in joint underwriting;

(2) Classification means the process of grouping insureds with similar loss or expense characteristics so that differences in losses and expenses may be recognized;

(3) Director means the Director of Insurance;

(4) Exempt commercial policyholder means an entity to which specific aspects of rate or policy form regulation do not apply or have been relaxed in accordance with rules and regulations adopted and promulgated pursuant to section 44-7515;

(5) Expense means that portion of a rate attributable to acquisition, field supervision, collection expense, general expense, taxes, licenses, and fees. Expense does not include loss adjustment expense;

(6) Experience rating plan means a rating formula and related procedures that use past loss experience of an individual policyholder to forecast future losses by measuring the policyholder's loss experience against the expected losses for policyholders in that classification to produce a prospective premium credit, debit, or unity modification;

(7) Joint reinsurance pool means an ongoing voluntary arrangement pursuant to which two or more insurers participate in the reinsurance of risks written by one or more member insurers and reinsured by one or more other member insurers. For purposes of this subdivision, a group of insurers under common ownership or control shall be considered a single insurer. A joint reinsurance pool may operate through an association, syndicate, or other arrangement;

(8) Joint underwriting means a voluntary arrangement established on an individual risk basis by which two or more insurers jointly contract to provide coverage for an insured. For purposes of this subdivision, a group of insurers under common ownership or control shall be considered a single insurer. Joint underwriting does not include any arrangement by which the participants are reinsuring the direct obligation of another risk-assuming entity;

(9) Joint underwriting pool means an ongoing voluntary arrangement pursuant to which two or more insurers participate in the sharing of risks written as their direct obligations according to a predetermined basis and the insurance remains the direct obligation of the pool participants. For purposes of this subdivision, a group of insurers under common ownership or control shall be considered a single insurer. A joint underwriting pool may operate through an association, syndicate, or other arrangement;

(10) Loss adjustment expense means the expense incurred by an insurer in the course of settling claims;

(11) Policy form means all policies, certificates, or other contracts providing insurance coverage. Policy form includes bonds and includes riders, endorsements, or other amendments to the policy form;

(12) Premium means the cost of insurance to the policyholder after all audit adjustments have been made and any dividends payable have been subtracted;

(13) Prospective loss cost means that portion of a rate intended to provide for expected losses and loss adjustment expenses. Prospective loss costs may provide for anticipated special assessments. Prospective loss costs do not include provisions for profits, dividends, or expenses other than loss adjustment expenses;

(14) Rating system means the information needed to determine the applicable rate or premium including rates, any manual or plan of rates, classifications, rating schedules, minimum premiums, policy fees, payment plans, rating plans or rules, anniversary rating date rules, and other similar information. Rating system does not include dividend rating plans or other provisions for the possible payment of dividends if such dividends are declared by the insurer's board of directors and are not guaranteed;

(15) Special assessments means guaranty fund assessments made pursuant to section 44-2407, Workers' Compensation Trust Fund assessments made pursuant to section 48-162.02, residual market assessments made pursuant to section 44-3,158 or 44-7528, and similar assessments. Special assessments are not expenses or losses;

(16) Statistical agent means an entity that, for the purpose of fulfilling the statistical reporting obligations of two or more insurers under the act, collects or compiles statistics from two or more insurers or provides reports developed from these statistics to the director. For purposes of this subdivision, a group of insurers under common ownership or control shall be considered a single insurer; and

(17) Supporting information means the experience and judgment of the filer and the experience or data of other insurers or advisory organizations relied upon by the filer, the interpretation of any other data relied upon by the filer, descriptions of methods used in developing a rating system, and any other information required by the director to be filed.

Source: Laws 2000, LB 1119, § 4; Laws 2001, LB 4, § 1; Laws 2007, LB117, § 25.
Effective date September 1, 2007.

ARTICLE 81

NEBRASKA PROTECTION IN ANNUITY TRANSACTIONS ACT

Section.

44-8101. Act, how cited.

44-8102. Purpose of act.

44-8103. Applicability of act.

44-8104. Act; exemptions.

44-8105. Terms, defined.

44-8106. Recommendation; purchase or exchange of annuity; requirements; insurer; duties.

44-8107. Director of Insurance; powers; violations.

44-8101 Act, how cited. Sections 44-8101 to 44-8107 shall be known and may be cited as the Nebraska Protection in Annuity Transactions Act.

Source: Laws 2006, LB 875, § 13; Laws 2007, LB117, § 26.
Effective date September 1, 2007.

44-8102 Purpose of act. The purpose of the Nebraska Protection in Annuity Transactions Act is to set forth standards and procedures for recommendations made by insurance producers and insurers to consumers regarding annuity transactions so that consumers' insurance needs and financial objectives at the time of the transaction are appropriately addressed.

Source: Laws 2006, LB 875, § 14; Laws 2007, LB117, § 27.
Effective date September 1, 2007.

44-8103 Applicability of act. The Nebraska Protection in Annuity Transactions Act applies to any recommendation to purchase or exchange an annuity made to a consumer by an insurance producer, or an insurer if an insurance producer is not involved, that results in the recommended purchase or exchange.

Source: Laws 2006, LB 875, § 15; Laws 2007, LB117, § 28.
Effective date September 1, 2007.

44-8104 Act; exemptions. Unless otherwise specifically included, the Nebraska Protection in Annuity Transactions Act does not apply to recommendations involving:

(1) Direct response solicitations if there is no recommendation based on information collected from the consumer pursuant to the act; or

(2) Contracts used to fund:

(a) An employee pension or welfare benefit plan that is covered by the federal Employee Retirement Income Security Act of 1974;

(b) A plan described by section 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code if established or maintained by an employer;

(c) A government or church plan defined in section 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the Internal Revenue Code;

(d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(e) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(f) Contracts entered into pursuant to the Burial Pre-Need Sale Act.

Source: Laws 2006, LB 875, § 16; Laws 2007, LB117, § 29.
Effective date September 1, 2007.

Cross Reference

Burial Pre-Need Sale Act, see section 12-1101.

44-8105 Terms, defined. For purposes of the Nebraska Protection in Annuity Transactions Act:

(1) Annuity means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity;

(2) Insurer means a company required to be licensed under the laws of this state to provide insurance products, including annuities;

(3) Insurance producer means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, including annuities; and

(4) Recommendation means advice provided by an insurance producer, or an insurer if an insurance producer is not involved, to a consumer that results in a purchase or exchange of an annuity in accordance with that advice.

Source: Laws 2006, LB 875, § 17; Laws 2007, LB117, § 30.
Effective date September 1, 2007.

44-8106 Recommendation; purchase or exchange of annuity; requirements; insurer; duties. (1) The insurance producer, or insurer if an insurance producer is not involved, shall have reasonable grounds to believe that the recommendation is suitable for the consumer based on the facts disclosed by the consumer before making a recommendation to a consumer under the Nebraska Protection in Annuity Transactions Act. The recommendation shall be based on the facts disclosed by the consumer relating to his or her investments, other insurance products, and the financial situation and needs of the consumer.

(2) Before the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer if an insurance producer is not involved, shall make reasonable efforts to obtain information concerning:

(a) The consumer's financial status;

(b) The consumer's tax status;

(c) The consumer's investment objectives; and

(d) Such other information used or considered to be reasonable in making recommendations to the consumer.

(3)(a) Except as provided under subdivision (3)(b) of this section, neither an insurance producer, nor an insurer if an insurance producer is not involved, shall have any obligation to a consumer under subsection (1) of this section related to any recommendation if the consumer:

(i) Refuses to provide relevant information requested by the insurance producer or insurer;

(ii) Decides to enter into an insurance transaction that is not based on a recommendation of the insurance producer or insurer; or

(iii) Fails to provide complete or accurate information.

(b) If a consumer provides information as described in subdivision (3)(a) of this section, an insurance producer or insurer shall make a recommendation that is reasonable under all the circumstances that are actually known to the insurance producer or insurer at the time of the recommendation.

(4)(a) An insurer shall:

(i) Assure that a system to supervise recommendations that is reasonably designed to achieve compliance with the Nebraska Protection in Annuity Transactions Act is established and maintained by complying with subdivisions (4)(d) through (f) of this section; or

(ii) Establish and maintain a system to supervise recommendations.

(b) Such system shall include, but not be limited to:

(i) Maintaining written procedures; and

(ii) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of the act.

(c) A general agent and independent agency shall either adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with the act or establish and maintain such a system. Such system shall include, but not be limited to:

(i) Maintaining written procedures; and

(ii) Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of the act.

(d) An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by subdivision (4)(a) of this section with respect to insurance producers under contract with or employed by the third party.

(e) An insurer shall make reasonable inquiry to assure that the third party contracting under subdivision (4)(d) of this section is performing the functions required under subdivision (4)(a) of this section and shall take such reasonable action to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing the following:

(i) Obtaining annually a certification from a third-party senior manager that the manager represents that the third party is performing the required functions; and

(ii) Periodically selecting third parties contracting under subdivision (4)(d) of this section to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances. Such third parties shall be selected based on reasonable selection criteria.

(f) An insurer shall have fulfilled its responsibilities under subdivision (4)(a) of this section if the insurer:

(i) Contracts with a third party pursuant to subdivision (4)(d) of this section; and

(ii) Complies with the requirements to supervise in subdivision (4)(e) of this section.

(g) An insurer, general agent, or independent agency is not required by subdivision (4)(a) or (b) of this section to:

(i) Review all insurance producer solicited transactions; or
 (ii) Supervise an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent, or independent agency.

(h) A general agent or independent agency contracting with an insurer pursuant to subdivision (4)(d) of this section shall, when requested by the insurer pursuant to subdivision (4)(e) of this section, promptly give a certification as described in subdivision (4)(e)(i) of this section or give a clear statement that it is unable to meet the certification criteria.

(i) No person may provide a certification under subdivision (4)(e)(i) of this section unless:

- (i) The person is a senior manager with responsibility for the delegated functions; and
- (ii) The person has a reasonable basis for making the certification.

(5) Compliance with the National Association of Securities Dealers Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this subsection shall limit the ability of the Director of Insurance to enforce the act.

Source: Laws 2006, LB 875, § 18; Laws 2007, LB117, § 31.
 Effective date September 1, 2007.

44-8107 Director of Insurance; powers; violations. (1) The Director of Insurance may order:

(a) An insurer to take reasonably appropriate corrective action for any consumer harmed by an insurance producer's or insurer's violation of the Nebraska Protection in Annuity Transactions Act;

(b) An insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of the act; and

(c) A general agency or independent agency that employs or contracts with an insurance producer to sell or solicit the sale of annuities to consumers, to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of the act.

(2) A violation of the act shall be an unfair trade practice in the business of insurance under the Unfair Insurance Trade Practices Act.

(3) The director may reduce or eliminate any applicable penalty under section 44-1529 for a violation of subsection (1) or (2) of section 44-8106 or subdivision (3)(b) of such section if corrective action for the consumer was taken promptly after a violation was discovered.

Source: Laws 2006, LB 875, § 19; Laws 2007, LB117, § 32.
 Effective date September 1, 2007.

Cross Reference

Unfair Insurance Trade Practices Act, see section 44-1521.

ARTICLE 82

CAPTIVE INSURERS ACT

Section.

- 44-8201. Act, how cited.
- 44-8202. Purposes of act.
- 44-8203. Terms, defined.
- 44-8204. Name.
- 44-8205. Certificate of authority; application; fee; plan of operation; filings required; director; powers; subsequent amendments; books and records.
- 44-8206. Management of business; director or officer; restriction.
- 44-8207. Certificate of authority; expiration; renewal; fee.
- 44-8208. Report; filing required; form; director; other reports.
- 44-8209. Total capital and surplus requirements; director; powers; letter of credit requirements.
- 44-8210. Examinations.
- 44-8211. Investments; limitation on loans and investments.
- 44-8212. Credit for reserves ceded to reinsurer.
- 44-8213. Membership in guaranty associations.
- 44-8214. Voluntary dissolution; approval of director required; effect of dissolution.
- 44-8215. Suspension or revocation of certificate of authority; administrative fine; grounds; notice; hearing; cease and desist order.
- 44-8216. Creation of special purpose financial captive insurers; applicability of act; form of organization; powers; duties; powers of director; limitation on dividends; confidentiality.
- 44-8217. Rules and regulations.
- 44-8218. Applicability of insurance laws.

44-8201 Act, how cited. Sections 44-8201 to 44-8218 shall be known and may be cited as the Captive Insurers Act.

Source: Laws 2007, LB117, § 35.
Effective date September 1, 2007.

44-8202 Purposes of act. The purposes of the Captive Insurers Act are to set forth the procedures for organizing and regulating the operations of captive insurers within the State of Nebraska and to encourage integrity, financial solvency, and stability of captive insurers for the purpose of promoting the development of Nebraska businesses.

Source: Laws 2007, LB117, § 36.
Effective date September 1, 2007.

44-8203 Terms, defined. For purposes of the Captive Insurers Act:

(1) Affiliated entity means any entity that directly or indirectly controls, is controlled by, or is under common control with a captive insurer;

(2) Captive insurer means a domestic insurer authorized under the act to provide insurance and reinsurance to its parent, any affiliated entity, or both. Such insurance and reinsurance shall be limited to the risks, hazards, and liabilities of its parent and affiliated entities;

(3) Control means the power to direct or cause the direction of the management and policies of an entity through ownership of voting securities;

(4) Director means the Director of Insurance; and

(5) Parent means an entity that directly or indirectly owns, controls, or holds, with power to vote, more than fifty percent of the outstanding voting securities or other ownership interest of a captive insurer.

Source: Laws 2007, LB117, § 37.
Effective date September 1, 2007.

44-8204 Name. No captive insurer shall adopt the name of any existing insurer or any name that may be misleading to the public.

Source: Laws 2007, LB117, § 38.
Effective date September 1, 2007.

44-8205 Certificate of authority; application; fee; plan of operation; filings required; director; powers; subsequent amendments; books and records. (1) No person shall transact the business of insurance as a captive insurer without first applying for and obtaining from the director a certificate of authority. An applicant shall submit a nonrefundable application fee of five hundred dollars with a plan of operation which includes:

(a) Articles of incorporation and bylaws or other documents of organization;

(b) Pro forma financial statements for two years;

(c) The source and nature of initial and ongoing capital;

(d) A feasibility study which discloses the types and adequacy of the insurance programs of the captive insurer, the identity of the parent and affiliated entities benefiting from such insurance program, and the relationships to the captive insurer as well as all projected expenses, contracts, and a holding company system chart identifying the ownership and relationship of the parent and affiliated entities;

(e) Copies of all insurance and reinsurance agreements of the captive insurer as well as disclosure of all transactions material to the insurance operations;

(f) Financial condition of the parent and, if requested by the director, any affiliated entities, benefiting from the captive insurance program;

(g) A management overview including competence, experience, and integrity of those controlling the insurance operations;

(h) A statement submitting to the jurisdiction of the director; and

(i) An explanation of how the operation of the captive insurer promotes the development of a Nebraska business.

(2) If the plan of operation is accepted and approved by the director, the articles and other documents of organization shall be filed in the office of the Secretary of State. A copy of

the articles or other documents of organization, certified by the Secretary of State, shall be filed with the director. Amendments to organizational documents shall be deemed a change to the plan of operation and shall be filed with and approved by the director before they are submitted to the Secretary of State.

(3) The director may refuse to issue a certificate of authority until he or she is reasonably satisfied that the plan of operation contains sufficient indication of a successful insurance operation and that the captive insurer will be able to meet expected or ongoing policy obligations.

(4) A captive insurer shall obtain prior written approval of any subsequent amendments to any components of the original plan of operation. The director shall deem that any captive insurer that has failed to disclose a transaction or a series of transactions that would circumvent the Captive Insurers Act to be in hazardous financial condition with respect to the public or its policyholders and subject to suspension or revocation of the certificate of authority of the captive insurer.

(5) Except as otherwise authorized in section 44-8216, a captive insurer may only transact any line or lines of insurance specified in subdivisions (5), (7), (8), (9), (10), and (18) of section 44-201. A captive insurer shall not transact directors and officers insurance.

(6) Every captive insurer shall provide to the director books and records in the state as to enable the financial examination of the captive insurer by the director.

Source: Laws 2007, LB117, § 39.
Effective date September 1, 2007.

44-8206 Management of business; director or officer; restriction. A board of directors or other governing body consisting of not less than three individuals shall manage the business of each captive insurer. The organizational documents or bylaws shall provide for the terms, meetings, and elections of the directors and officers of the governing body. No individual may serve as a director or officer who has been convicted of fraud involving any financial institution or of a felony involving misuse of funds.

Source: Laws 2007, LB117, § 40.
Effective date September 1, 2007.

44-8207 Certificate of authority; expiration; renewal; fee. The certificate of authority issued to a captive insurer shall expire on June 30 of each year. The director shall renew the certificate of authority upon payment of an annual renewal fee of five hundred dollars and all other required fees and the filing of all required reports.

Source: Laws 2007, LB117, § 41.
Effective date September 1, 2007.

44-8208 Report; filing required; form; director; other reports. (1) Every captive insurer with a certificate of authority to transact business in this state pursuant to the Captive Insurers Act shall file with the director a report, signed and sworn to by its chief officers, of its financial condition as of the end of each fiscal year. The report shall be in a form

prescribed by the director and contain such information as the director deems necessary for the purpose of ascertaining whether the captive insurer can continue to meet its policy obligations to its parent, affiliated entities, and claimants. The report shall be filed within sixty days following the end of the captive insurer's fiscal year. The director may require that the report include the information required by section 44-322, including any instructions, procedures, and guidelines consistent with the act.

(2) The director may prescribe the format and frequency of other reports to be filed, which may include, but not be limited to, summary loss reports, quarterly financial statements, audited annual financial statements, holding company statements, biographical information on officers and directors, and other professional reports.

Source: Laws 2007, LB117, § 42.
Effective date September 1, 2007.

44-8209 Total capital and surplus requirements; director; powers; letter of credit requirements. (1) No captive insurer shall be permitted to transact any business in this state unless it maintains total capital and surplus in the amount of at least one hundred thousand dollars in such form as is acceptable to the director.

(2) Upon a written finding by the director that the approved plan of operation or the operational results of the captive insurer require either additional capital or a larger surplus than required by this section, the director may require that additional capital or surplus, or both, be obtained. Additional capital or surplus may be tendered in the form of an irrevocable evergreen letter of credit acceptable to the director.

(3) Any letter of credit provided to satisfy the requirements of the Captive Insurers Act shall be:

(a) Jointly held under the control of the director and the captive insurer for the benefit of claimants;

(b) Issued or confirmed by an institution that is insured by the Federal Deposit Insurance Corporation;

(c) The sole property of such captive insurer; and

(d) Free and clear of any claim or encumbrance.

Source: Laws 2007, LB117, § 43.
Effective date September 1, 2007.

44-8210 Examinations. The director may examine the financial condition, affairs, and management of any applicant or captive insurer pursuant to the Insurers Examination Act.

Source: Laws 2007, LB117, § 44.
Effective date September 1, 2007.

Cross Reference

Insurers Examination Act, see section 44-5901.

44-8211 Investments; limitation on loans and investments. (1) Captive insurers shall be subject to the types and nature of investments as set forth in the Insurers Investment Act, but not subject to any limitations contained in such act as to invested amounts, except that the director may prohibit or limit any investment that threatens the solvency or liquidity of any such captive insurer or if such investments are not made in accordance with the approved plan of operation.

(2) No captive insurer may make a loan to or an investment in its parent or affiliated entities without prior written approval of the director and any such transaction shall be evidenced by documentation approved by the director. Loans of minimum capital and surplus funds are prohibited.

Source: Laws 2007, LB117, § 45.
Effective date September 1, 2007.

Cross Reference

Insurers Investment Act, see section 44-5101.

44-8212 Credit for reserves ceded to reinsurer. (1) Except as otherwise provided in subsection (2) of this section, any captive insurer authorized to do business in this state may take credit for reserves on risks ceded to a reinsurer pursuant to the provisions of sections 44-416.05 to 44-416.10 and any rules and regulations adopted and promulgated under such sections.

(2) Notwithstanding the provisions of subsection (1) of this section, any captive insurer may cede risks to a reinsurer not meeting the standards of sections 44-416.05 to 44-416.10 and may take reserve credits if the captive insurer receives prior written approval from the director.

Source: Laws 2007, LB117, § 46.
Effective date September 1, 2007.

44-8213 Membership in guaranty associations. A captive insurer shall not be a member of the Nebraska Property and Liability Insurance Guaranty Association or the Nebraska Life and Health Insurance Guaranty Association. The Nebraska Property and Liability Insurance Guaranty Association Act and the Nebraska Life and Health Insurance Guaranty Association Act shall not be applicable to coverage offered by a captive insurer.

Source: Laws 2007, LB117, § 47.
Effective date September 1, 2007.

Cross Reference

Nebraska Life and Health Insurance Guaranty Association Act, see section 44-2720.
Nebraska Property and Liability Insurance Guaranty Association Act, see section 44-2418.

44-8214 Voluntary dissolution; approval of director required; effect of dissolution. The director shall approve any voluntary dissolution of a captive insurer if the director determines that all obligations of the captive insurer have been satisfied. The dissolution of a captive insurer shall not impair the right of any person to commence an action against the captive insurer for any liability previously incurred.

Source: Laws 2007, LB117, § 48.
Effective date September 1, 2007.

44-8215 Suspension or revocation of certificate of authority; administrative fine; grounds; notice; hearing; cease and desist order. (1) After notice and a hearing conducted pursuant to the Administrative Procedure Act, the director may suspend or revoke a certificate of authority or may impose an administrative fine not to exceed one thousand dollars per violation, or any combination of such actions, if the director finds the captive insurer:

(a) Engages in financial practices that make further transaction of business in this state hazardous or injurious to claimants or the public as defined by rule and regulation adopted and promulgated by the director;

(b) Within fifteen business days fails to respond to an inquiry of the director;

(c) Fails to pay any final judgment rendered against it in this state on any contractual obligation in a reasonable period of time;

(d) Conducts business fraudulently or has not met its contractual obligations in good faith; or

(e) Violates any provision of the laws of this or any other state.

(2) In lieu of or in addition to the administrative fines set forth in subsection (1) of this section, the director may issue a cease and desist order to a captive insurer if the captive insurer engages in any of the activities set forth in subsection (1) of this section.

Source: Laws 2007, LB117, § 49.
Effective date September 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

44-8216 Creation of special purpose financial captive insurers; applicability of act; form of organization; powers; duties; powers of director; limitation on dividends; confidentiality. (1) This section provides for the creation of special purpose financial captive insurers to diversify and broaden insurers' access to sources of capital.

(2) For purposes of this section:

(a) Counterparty means a special purpose financial captive insurer's parent or affiliated entity, which is an insurer domiciled in Nebraska that cedes life insurance risks to the special purpose financial captive insurer pursuant to the special purpose financial captive insurer contract;

(b) Insolvency or insolvent means that the special purpose financial captive insurer is unable to pay its obligations when they are due, unless those obligations are the subject of a bona fide dispute;

(c) Insurance securitization means a package of related risk transfer instruments, capital market offerings, and facilitating administrative agreements, under which a special purpose financial captive insurer obtains proceeds either directly or indirectly through the issuance of

securities, and may hold the proceeds in trust to secure the obligations of the special purpose financial captive insurer under one or more special purpose financial captive insurer contracts, in that the investment risk to the holders of the securities is contingent upon the obligations of the special purpose financial captive insurer to the counterparty under the special purpose financial captive insurer contract in accordance with the transaction terms and pursuant to the Captive Insurers Act;

(d) Organizational document means the special purpose financial captive insurer's articles of incorporation, articles of organization, bylaws, operating agreement, or other foundational documents that establish the special purpose financial captive insurer as a legal entity or prescribes its existence;

(e) Permitted investments means those investments that meet the qualifications set forth in section 44-8211;

(f) Securities means debt obligations, equity investments, surplus certificates, surplus notes, funding agreements, derivatives, and other legal forms of financial instruments;

(g) Special purpose financial captive insurer means a captive insurer which has received a certificate of authority from the director for the limited purposes provided for in this section;

(h) Special purpose financial captive insurer contract means a contract between the special purpose financial captive insurer and the counterparty pursuant to which the special purpose financial captive insurer agrees to provide insurance or reinsurance protection to the counterparty for risks associated with the counterparty's insurance or reinsurance business; and

(i) Special purpose financial captive insurer securities means the securities issued by a special purpose financial captive insurer.

(3)(a) The provisions of the Captive Insurers Act, other than those in subdivision (3)(b) of this section, apply to a special purpose financial captive insurer. If a conflict occurs between a provision of the act not in this section and a provision of this section, the latter controls.

(b) The requirements of this section shall not apply to specific special purpose financial captive insurers if the director finds a specific requirement is inappropriate due to the nature of the risks to be insured by the special purpose financial captive insurer and if the special purpose financial captive insurer meets criteria established by rules and regulations adopted and promulgated by the director.

(4) A special purpose financial captive insurer may be established as a stock corporation, limited liability company, partnership, or other form of organization approved by the director.

(5)(a) A special purpose financial captive insurer may not issue a contract for assumption of risk or indemnification of loss other than a special purpose financial captive insurer contract. However, the special purpose financial captive insurer may cede risks assumed through a special purpose financial captive insurer contract to third-party reinsurers through the purchase of reinsurance or retrocession protection if approved by the director.

(b) A special purpose financial captive insurer may enter into contracts and conduct other commercial activities related or incidental to and necessary to fulfill the purposes of the special purpose financial captive insurer contract, insurance securitization, and this

section. Those activities may include, but are not limited to: Entering into special purpose financial captive insurer contracts; issuing securities of the special purpose financial captive insurer in accordance with applicable securities law; complying with the terms of these contracts or securities; entering into trust, swap, tax, administration, reimbursement, or fiscal agent transactions; or complying with trust indenture, reinsurance, retrocession, and other agreements necessary or incidental to effectuate an insurance securitization in compliance with this section and in the plan of operation approved by the director.

(6)(a) A special purpose financial captive insurer may issue securities, subject to and in accordance with applicable law, its approved plan of operation, and its organization documents.

(b) A special purpose financial captive insurer, in connection with the issuance of securities, may enter into and perform all of its obligations under any required contracts to facilitate the issuance of these securities.

(c) The obligation to repay principal or interest, or both, on the securities issued by the special purpose financial captive insurer shall be designed to reflect the risk associated with the obligations of the special purpose financial captive insurer to the counterparty under the special purpose financial captive insurer contract.

(7) A special purpose financial captive insurer may enter into swap agreements, or other forms of asset management agreements, including guaranteed investment contracts, or other transactions that have the objective of leveling timing differences in funding of up-front or ongoing transaction expenses or managing asset, credit, prepayment, or interest rate risk of the investments in the trust to ensure that the investments are sufficient to assure payment or repayment of the securities, and related interest or principal payments, issued pursuant to a special purpose financial captive insurer insurance securitization transaction or the obligations of the special purpose financial captive insurer under the special purpose financial captive insurer contract or for any other purpose approved by the director. All asset management agreements entered into by the special purpose financial captive insurer must be approved by the director.

(8)(a) A special purpose financial captive insurer, at any given time, may enter into and effectuate a special purpose financial captive insurer contract with a counterparty if the special purpose financial captive insurer contract obligates the special purpose financial captive insurer to indemnify the counterparty for losses and contingent obligations of the special purpose financial captive insurer under the special purpose financial captive insurer contract are securitized through a special purpose financial captive insurer insurance securitization, which security for such obligations may be funded and secured with assets held in trust for the benefit of the counterparty pursuant to agreements contemplated by this section and invested in a manner that meet the criteria as provided in section 44-8211.

(b) A special purpose financial captive insurer may enter into agreements with affiliated companies and third parties and conduct business necessary to fulfill its obligations and administrative duties incidental to the insurance securitization and the special

purpose financial captive insurer contract. The agreements may include management and administrative services agreements and other allocation and cost sharing agreements, or swap and asset management agreements, or both, or agreements for other contemplated types of transactions provided in this section.

(c) A special purpose financial captive insurer contract must contain provisions that:

(i) Require the special purpose financial captive insurer to either (A) enter into a trust agreement specifying what recoverables or reserves, or both, the agreement is to cover and to establish a trust account for the benefit of the counterparty and the security holders or (B) establish such other method of security acceptable to the director;

(ii) Stipulate that assets deposited in the trust account must be valued in accordance with their current fair market value and must consist only of permitted investments;

(iii) If a trust arrangement is used, require the special purpose financial captive insurer, before depositing assets with the trustee, to execute assignments, to execute endorsements in blank, or to take such actions as are necessary to transfer legal title to the trustee of all shares, obligations, or other assets requiring assignments, in order that the counterparty, or the trustee upon the direction of the counterparty, may negotiate whenever necessary the assets without consent or signature from the special purpose financial captive insurer or another entity; and

(iv) If a trust arrangement is used, stipulate that the special purpose financial captive insurer and the counterparty agree that the assets in the trust account, established pursuant to the provisions of the special purpose financial captive insurer contract, may be withdrawn by the counterparty, or the trustee on its behalf, at any time, only in accordance with the terms of the special purpose financial captive insurer contract, and must be utilized and applied by the counterparty or any successor of the counterparty by operation of law, including, subject to the provisions of this section, but without further limitation, any liquidator, rehabilitator, or receiver of the counterparty, without diminution because of insolvency on the part of the counterparty or the special purpose financial captive insurer, only for the purposes set forth in the credit for reinsurance laws and rules and regulations of this state.

(d) The special purpose financial captive insurer contract may contain provisions that give the special purpose financial captive insurer the right to seek approval from the counterparty to withdraw from the trust all or part of the assets, or income from them, contained in the trust and to transfer the assets to the special purpose financial captive insurer if such provisions comply with the credit for reinsurance laws and rules and regulations of this state.

(9) A special purpose financial captive insurer contract meeting the provisions of this section must be granted credit for reinsurance treatment or otherwise qualify as an asset or a reduction from liability for reinsurance ceded by a domestic insurer to a special purpose financial captive insurer as an assuming insurer for the benefit of the counterparty if and only to the extent:

(a) Of the value of the assets held in trust for, or clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution as defined in section 44-416.08, or as approved by the director, for the benefit of the counterparty under the special purpose financial captive insurer contract; and

(b) The assets are held or invested in one or more of the forms allowed in section 44-8211.

(10)(a)(i) Notwithstanding the provisions of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, the director may apply to the district court of Lancaster County for an order authorizing the director to rehabilitate or liquidate a special purpose financial captive insurer domiciled in this state on one or more of the following grounds:

(A) There has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the special purpose financial captive insurer intended to be used to pay amounts owed to the counterparty or the holders of special purpose financial captive insurer securities; or

(B) The special purpose financial captive insurer is insolvent and the holders of a majority in outstanding principal amount of each class of special purpose financial captive insurer securities request or consent to conservation, rehabilitation, or liquidation pursuant to the provisions of this section.

(ii) The court may not grant relief provided by subdivision (10)(a)(i) of this section unless, after notice and a hearing, the director establishes that relief must be granted.

(b) Notwithstanding any other applicable law, rule, or regulation, upon any order of rehabilitation or liquidation of a special purpose financial captive insurer, the receiver shall manage the assets and liabilities of the special purpose financial captive insurer pursuant to the provisions of subsection (11) of this section.

(c) With respect to amounts recoverable under a special purpose financial captive insurer contract, the amount recoverable by the receiver must not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to the counterparty, notwithstanding another provision in the contracts or other documentation governing the special purpose financial captive insurer insurance securitization.

(d) An application or petition, or a temporary restraining order or injunction issued pursuant to the provisions of the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, with respect to a counterparty does not prohibit the transaction of a business by a special purpose financial captive insurer, including any payment by a special purpose financial captive insurer made pursuant to a special purpose financial captive insurer security, or any action or proceeding against a special purpose financial captive insurer or its assets.

(e) Notwithstanding the provisions of any applicable law or rule or regulation, the commencement of a summary proceeding or other interim proceeding commenced before a formal delinquency proceeding with respect to a special purpose financial captive insurer, and any order issued by the court, does not prohibit the payment by a special purpose financial captive insurer made pursuant to a special purpose financial captive insurer security or special purpose financial captive insurer contract or the special purpose financial captive insurer from taking any action required to make the payment.

(f) Notwithstanding the provisions of any other applicable law, rule, or regulation:

(i) A receiver of a counterparty may not void a nonfraudulent transfer by a counterparty to a special purpose financial captive insurer of money or other property made pursuant to a special purpose financial captive insurer contract; and

(ii) A receiver of a special purpose financial captive insurer may not void a nonfraudulent transfer by the special purpose financial captive insurer of money or other property made to a counterparty pursuant to a special purpose financial captive insurer contract or made to or for the benefit of any holder of a special purpose financial captive insurer security on account of the special purpose financial captive insurer security.

(g) With the exception of the fulfillment of the obligations under a special purpose financial captive insurer contract, and notwithstanding the provisions of any other applicable law or rule or regulation, the assets of a special purpose financial captive insurer, including assets held in trust, must not be consolidated with or included in the estate of a counterparty in any delinquency proceeding against the counterparty pursuant to the provisions of this section for any purpose including, without limitation, distribution to creditors of the counterparty.

(11) A special purpose financial captive insurer may not declare or pay dividends in any form to its owners other than in accordance with the insurance securitization transaction agreements, and in no instance shall the dividends decrease the capital of the special purpose financial captive insurer below two hundred fifty thousand dollars, and, after giving effect to the dividends, the assets of the special purpose financial captive insurer, including any assets held in trust pursuant to the terms of the insurance securitization, must be sufficient to satisfy the director that it can meet its obligations. Approval by the director of an ongoing plan for the payment of dividends, interest on securities, or other distribution by a special purpose financial captive insurer must be conditioned upon the retention, at the time of each payment, of capital or surplus equal to or in excess of amounts specified by, or determined in accordance with formulas approved for the special purpose financial captive insurer by, the director.

(12) Information submitted pursuant to the provisions of this section shall be given confidential treatment, shall not be subject to subpoena, and shall not be made public by the director or any other person, except to other state, federal, foreign, and international regulatory and law enforcement agencies if the recipient agrees in writing to maintain the confidentiality of the information, without the prior written consent of the special purpose financial captive insurer unless the director, after giving the special purpose financial captive insurer notice and opportunity to be heard, determines that the best interest of policyholders, shareholders, or the public will be served by the publication thereof, in which event he or she may publish all or any part thereof in such manner as he or she may deem appropriate.

Source: Laws 2007, LB117, § 50.
Effective date September 1, 2007.

Cross Reference

Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, see section 44-4801.

44-8217 Rules and regulations. The director may adopt and promulgate rules and regulations to carry out the Captive Insurers Act.

Source: Laws 2007, LB117, § 51.
Effective date September 1, 2007.

44-8218 Applicability of insurance laws. (1) The insurance laws of this state shall not apply to captive insurers except as permitted in the Captive Insurers Act.

(2) The following provisions of Chapter 44 apply to captive insurers:

(a) The Insurers Examination Act;

(b) Sections 44-101, 44-101.01, 44-102, 44-103, 44-114, 44-116, 44-154, 44-205.01, 44-231, 44-301, 44-318, 44-320, 44-326, and 44-360; and

(c) The Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act. Such act shall only apply to a captive insurer that provides insurance and reinsurance to a parent or affiliated entity that is an insurer.

Source: Laws 2007, LB117, § 52.
Effective date September 1, 2007.

Cross Reference

Insurers Examination Act, see section 44-5901.

Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, see section 44-4801.

CHAPTER 45

INTEREST, LOANS, AND DEBT

Article.

1. Interest Rates and Loans.
 - (f) Loan Brokers. 45-191.01, 45-191.04.
3. Installment Sales. 45-334 to 45-353.
7. Mortgage Bankers Registration and Licensing. 45-701 to 45-723.
9. Delayed Deposit Services Licensing Act. 45-920, 45-927.
10. Nebraska Installment Loan Act. 45-1013 to 45-1033.

ARTICLE 1

INTEREST RATES AND LOANS

(f) LOAN BROKERS

Section.

- 45-191.01. Loan brokerage agreement; written disclosure statement; requirements.
- 45-191.04. Loan brokerage agreement; requirements; right to cancel.

(f) LOAN BROKERS

45-191.01 Loan brokerage agreement; written disclosure statement; requirements. (1) At least forty-eight hours before the borrower signs a loan brokerage agreement, the loan broker shall give the borrower a written disclosure statement. The cover sheet of the disclosure statement shall have printed, in at least ten-point boldface capital letters, the title DISCLOSURES REQUIRED BY NEBRASKA LAW. The following statement, printed in at least ten-point type, shall appear under the title:

THE STATE OF NEBRASKA HAS NOT REVIEWED AND DOES NOT APPROVE, RECOMMEND, ENDORSE, OR SPONSOR ANY LOAN BROKERAGE AGREEMENT. THE INFORMATION CONTAINED IN THIS DISCLOSURE DOCUMENT HAS NOT BEEN VERIFIED BY THE STATE. IF YOU HAVE QUESTIONS, SEEK LEGAL ADVICE BEFORE YOU SIGN A LOAN BROKERAGE AGREEMENT.

Only the title and the statement shall appear on the cover sheet.

(2) The body of the disclosure statement shall contain the following information:

(a) The name, street address, and telephone number of the loan broker, the names under which the loan broker does, has done, or intends to do business, the name and street address of any parent or affiliated company, and the electronic mail and Internet address of the loan broker, if any;

(b) A statement as to whether the loan broker does business as an individual, partnership, corporation, or other organizational form, including identification of the state of incorporation or formation;

- (c) How long the loan broker has done business;
- (d) The number of loan brokerage agreements the loan broker has entered into in the previous twelve months;
- (e) The number of loans the loan broker has obtained for borrowers in the previous twelve months;
- (f) A description of the services the loan broker agrees to perform for the borrower;
- (g) The conditions under which the borrower is obligated to pay the loan broker. This disclosure shall be in boldface type;
- (h) The names, titles, and principal occupations for the past five years of all officers, directors, or persons occupying similar positions responsible for the loan broker's business activities;
- (i) A statement whether the loan broker or any person identified in subdivision (h) of this subsection:
 - (i) Has been convicted of a felony or misdemeanor or pleaded nolo contendere to a felony or misdemeanor charge if such felony or misdemeanor involved fraud, embezzlement, fraudulent conversion, or misappropriation of property;
 - (ii) Has been held liable in a civil action by final judgment or consented to the entry of a stipulated judgment if the civil action alleged fraud, embezzlement, fraudulent conversion, or misappropriation of property or the use of untrue or misleading representations in an attempt to sell or dispose of real or personal property or the use of unfair, unlawful, or deceptive business practices; or
 - (iii) Is subject to any currently effective injunction or restrictive order relating to business activity as the result of an action brought by a public agency or department including, but not limited to, action affecting any vocational license; and
- (j) Any other information the director requires.

Source: Laws 1993, LB 270, § 3; Laws 2007, LB124, § 29.
Operative date September 1, 2007.

45-191.04 Loan brokerage agreement; requirements; right to cancel. (1) A loan brokerage agreement shall be in writing and shall be signed by the loan broker and the borrower. The loan broker shall furnish the borrower a copy of such signed loan brokerage agreement at the time the borrower signs it.

(2) The borrower has the right to cancel a loan brokerage agreement for any reason at any time within three business days after the date the parties sign the agreement. The loan brokerage agreement shall set forth the borrower's right to cancel and the procedures to be followed when an agreement is canceled.

(3) A loan brokerage agreement shall set forth in at least ten-point type, or handwriting of at least equivalent size, the following:

- (a) The terms and conditions of payment;

(b) A full and detailed description of the acts or services the loan broker will undertake to perform for the borrower;

(c) The loan broker's principal business address, telephone number, and electronic mail and Internet address, if any, and the name, address, telephone number, and electronic mail and Internet address, if any, of its agent in the State of Nebraska authorized to receive service of process;

(d) The business form of the loan broker, whether a corporation, partnership, limited liability company, or otherwise; and

(e) The following notice of the borrower's right to cancel the loan brokerage agreement pursuant to this section:

"You have three business days in which you may cancel this agreement for any reason by mailing or delivering written notice to the loan broker. The three business days shall expire on (last date to mail or deliver notice), and notice of cancellation should be mailed to (loan broker's name and business street address). If you choose to mail your notice, it must be placed in the United States mail properly addressed, first-class postage prepaid, and postmarked before midnight of the above date. If you choose to deliver your notice to the loan broker directly, it must be delivered to the loan broker by the end of the normal business day on the above date. Within five business days after receipt of the notice of cancellation, the loan broker shall return to you all sums paid by you to the loan broker pursuant to this agreement."

The notice shall be set forth immediately above the place at which the borrower signs the loan brokerage agreement.

Source: Laws 1993, LB 270, § 6; Laws 2001, LB 53, § 89; Laws 2007, LB124, § 30. Operative date September 1, 2007.

ARTICLE 3

INSTALLMENT SALES

- Section.
- 45-334. Act, how cited.
- 45-340. Contracts negotiated by mail; requirements.
- 45-344. Excess charges; penalty.
- 45-346. License; application; issuance; bond; fee; term; director; duties; change of control of licensee; new application required.
- 45-346.01. Licensee; move of place of business; maintain minimum net worth; bond; existing licensee; how treated.
- 45-347. Fees; disposition.
- 45-351. Licensee; investigation and inspection; director; appoint examiners; charges; fines; lien.
- 45-352. Rules and regulations; adopt.
- 45-353. Violations; enforcement; receiver; appointment; powers; duties.

45-334 Act, how cited. Sections 45-334 to 45-353 shall be known and may be cited as the Nebraska Installment Sales Act.

Source: Laws 1965, c. 268, § 1, p. 756; Laws 1994, LB 979, § 11; Laws 2007, LB124, § 31.
Operative date September 1, 2007.

45-340 Contracts negotiated by mail; requirements. Installment contracts negotiated and entered into by mail without personal solicitation by salesmen or other representatives of the seller and based upon the catalog of the seller or other printed solicitation of business, which is distributed and made available generally to the public, if such catalog or other printed solicitation clearly sets forth the cash and time-sale prices and other terms of sales to be made through such medium, may be made as provided in this section. All provisions of the Nebraska Installment Sales Act shall apply to such sales except that the seller shall not be required to deliver a copy of the contract to the buyer as provided in section 45-336 and if the contract when received by the seller contains any blank spaces the seller may insert in the appropriate blank space the amounts of money and other terms which are set forth in the seller's catalog or other printed solicitation which is then in effect. In lieu of sending the buyer a copy of the contract as provided in section 45-336, the seller shall furnish to the buyer a written statement of any items inserted in the blank spaces in the contract received from the buyer.

Source: Laws 1965, c. 268, § 7, p. 762; Laws 2007, LB124, § 32.
Operative date September 1, 2007.

45-344 Excess charges; penalty. If any seller or sales finance company, in the making or collection of an installment contract, shall, directly or indirectly, contract for, take, or receive charges in excess of those authorized by the Nebraska Installment Sales Act except as a result of an accidental and bona fide error such contract shall be void and uncollectible as to (1) all of the excessive portion of the time-price differential, (2) the first one thousand dollars of the time-price differential authorized by section 45-338, and (3) the first four thousand dollars of the principal of the contract. If any seller or sales finance company violates any provision of the act, other than the violations described above, except as a result of an accidental and bona fide error, such installment contract shall be void and uncollectible as to the first five hundred dollars of the time-price differential and the first one thousand dollars of the principal of such contract. If any of such money has been paid by the buyer, such buyer or his or her assignee may recover under the act in a civil suit brought within one year after the due date, or any extension thereof, of the last installment of the contract.

Source: Laws 1965, c. 268, § 11, p. 763; Laws 2007, LB124, § 33.
Operative date September 1, 2007.

45-346 License; application; issuance; bond; fee; term; director; duties; change of control of licensee; new application required. (1) Each place of business operating under a license under the Nebraska Installment Sales Act shall have and properly display therein a

nontransferable and nonassignable license. The same person may obtain additional licenses upon compliance with the act as to each license.

(2) Application for a license shall be on a form prescribed and furnished by the director and shall include audited financial statements showing a minimum net worth of one hundred thousand dollars. If the applicant is an individual or a sole proprietorship, the application shall include the applicant's social security number.

(3) An applicant for a license shall file with the Department of Banking and Finance a surety bond in the amount of fifty thousand dollars, furnished by a surety company authorized to do business in this state. The bond shall be for the use of the State of Nebraska and any Nebraska resident who may have claims or causes of action against the applicant. The surety may cancel the bond only upon thirty days' written notice to the director.

(4) A license fee of one hundred fifty dollars shall be submitted along with each application.

(5) The license year shall begin on October 1 of each year. Each license shall remain in force until revoked, suspended, canceled, expired, or surrendered.

(6) The director shall, after an application has been filed for a license under the act, investigate the facts, and if he or she finds that the experience, character, and general fitness of the applicant, of the members thereof if the applicant is a corporation or association, and of the officers and directors thereof if the applicant is a corporation, are such as to warrant belief that the business will be operated honestly, fairly, and efficiently within the purpose of the act, the director shall issue and deliver a license to the applicant to do business as a sales finance company in accordance with the license and the act. The director shall have the power to reject for cause any application for a license.

(7) The director shall, within his or her discretion, make an examination and inspection concerning the propriety of the issuance of a license to any applicant. The cost of such examination and inspection shall be borne by the applicant.

(8) If a change of control of a licensee is proposed, a new application for a license shall be submitted to the department. Control in the case of a corporation means (a) direct or indirect ownership of or the right to control twenty-five percent or more of the voting shares of the corporation or (b) the ability of a person or group acting in concert to elect a majority of the directors or otherwise effect a change in policy. Control in the case of any other entity means any change in the principals of the organization, whether active or passive.

Source: Laws 1965, c. 268, § 13, p. 764; Laws 1997, LB 752, § 116; Laws 2004, LB 999, § 35; Laws 2005, LB 533, § 47; Laws 2007, LB124, § 34.
Operative date September 1, 2007.

45-346.01 Licensee; move of place of business; maintain minimum net worth; bond; existing licensee; how treated. (1) A licensee may move its place of business from one place to another within a county without obtaining a new license if the licensee gives written notice thereof to the director at least ten days prior to such move.

(2) A licensee shall maintain the minimum net worth as required by section 45-346 while a license issued under the Nebraska Installment Sales Act is in effect. The minimum net worth shall be proven by an annual audit conducted by a certified public accountant. A licensee

shall submit a copy of the annual audit to the director within forty-five days after the audit is completed. If a licensee fails to maintain the required minimum net worth, the Department of Banking and Finance may issue a notice of cancellation of the license in lieu of revocation proceedings.

(3) The surety bond or a substitute bond as required by section 45-346 shall remain in effect while a license issued under the Nebraska Installment Sales Act is in effect. If a licensee fails to maintain a surety bond or substitute bond, the licensee shall immediately cease doing business and surrender the license to the department. If the licensee does not surrender the license, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(4) Until October 1, 2008, a licensee licensed prior to September 1, 2007, may operate with no net worth or bonding requirement as provided for at the time such licensee was originally licensed.

Source: Laws 2007, LB124, § 35.
Operative date September 1, 2007.

45-347 Fees; disposition. All money collected under the authority of the Nebraska Installment Sales Act shall be remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund.

Source: Laws 1965, c. 268, § 14, p. 764; Laws 1973, LB 39, § 5; Laws 1995, LB 599, § 13; Laws 2007, LB124, § 36.
Operative date September 1, 2007.

45-351 Licensee; investigation and inspection; director; appoint examiners; charges; fines; lien. (1) The Department of Banking and Finance shall be charged with the duty of inspecting the business, records, and accounts of all persons who engage in the business of a sales finance company subject to the Nebraska Installment Sales Act. The director shall have the power to appoint examiners who shall, under his or her direction, investigate the installment contracts and business and examine the books and records of licensees when the director shall so determine. Such examinations shall not be conducted more often than annually except as provided in subsection (2) of this section.

(2) The director or his or her duly authorized representative shall have the power to make such investigations as he or she shall deem necessary, and to the extent necessary for this purpose, he or she may examine such licensee or any other person and shall have the power to compel the production of all relevant books, records, accounts, and documents.

(3) The expenses of the director incurred in the examination of the books and records of licensees shall be charged to the licensees as set forth in sections 8-605 and 8-606. The director may charge the costs of an investigation of a nonlicensed person to such person, and such costs shall be paid within thirty days after receipt of billing.

(4) Upon receipt by a licensee of a notice of investigation or inquiry request for information from the department, the licensee shall respond within twenty-one calendar days. Each day a licensee fails to respond as required by this subsection shall constitute a separate violation.

(5) If the director finds, after notice and opportunity for hearing in accordance with the Administrative Procedure Act, that any person has willfully and intentionally violated any provision of the Nebraska Installment Sales Act, any rule or regulation adopted and promulgated under the act, or any order issued by the director under the act, the director may order such person to pay (a) an administrative fine of not more than one thousand dollars for each separate violation and (b) the costs of investigation. All fines collected by the department pursuant to this subsection shall be remitted to the State Treasurer for credit to the permanent school fund.

(6) If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to subsection (5) of this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered in a civil action by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law. Failure of the person to pay such fine and costs shall constitute a separate violation of the Nebraska Installment Sales Act.

Source: Laws 1965, c. 268, § 18, p. 767; Laws 1994, LB 979, § 13; Laws 1997, LB 137, § 22; Laws 1999, LB 396, § 29; Laws 2004, LB 999, § 36; Laws 2007, LB124, § 37.
Operative date September 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

45-352 Rules and regulations; adopt. The director shall have the power to make such general rules and regulations and specific rulings, demands, and findings as may be necessary for the proper conduct of the business licensed under the Nebraska Installment Sales Act, and the enforcement of the act, in addition thereto and not inconsistent therewith.

Source: Laws 1965, c. 268, § 19, p. 767; Laws 2007, LB124, § 38.
Operative date September 1, 2007.

45-353 Violations; enforcement; receiver; appointment; powers; duties. (1) Whenever the director has reasonable cause to believe that any person is violating or is threatening to or intends to violate any of the provisions of the Nebraska Installment Sales Act, he or she may, in addition to all actions provided for in the act and without prejudice thereto, enter an order requiring such person to desist or to refrain from such violation. An action may also be brought, on the relation of the Attorney General or the director, to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof.

(2) In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court, in which such action is brought, shall have power and jurisdiction to impound and appoint a receiver for the property and business of the defendant, including books, papers, documents, and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent violations of the Nebraska Installment Sales Act through or by means of the use of such property and business. Such receiver, when so appointed and qualified, shall have such powers and duties as to custody, collection, administration, winding up and liquidation of such property and business as shall, from time to time, be conferred upon him or her by the court.

Source: Laws 1965, c. 268, § 20, p. 767; Laws 2007, LB124, § 39.
Operative date September 1, 2007.

ARTICLE 7

MORTGAGE BANKERS REGISTRATION AND LICENSING

Section.

- 45-701. Act, how cited.
- 45-702. Terms, defined.
- 45-705. License or registration required; application; fees; background investigation; registered agent.
- 45-706. License; issuance; denial; appeal; renewal; fees.
- 45-708. Prohibited acts; penalty.
- 45-710. Director; investigate complaints; request for information; costs; confidentiality.
- 45-711. Licensee; duties.
- 45-714. Prohibited acts; violation; penalty; civil liability.
- 45-715. Department; duties; rules and regulations; multistate licensing and application system.
- 45-716. Money collected; disposition.
- 45-722. Acquisition of control of mortgage banking business; procedure; disapproval; hearing.
- 45-723. License under multistate licensing and application system; department; powers and duties.

45-701 Act, how cited. Sections 45-701 to 45-723 shall be known and may be cited as the Mortgage Bankers Registration and Licensing Act.

Source: Laws 1989, LB 272, § 4; Laws 1995, LB 163, § 1; Laws 2006, LB 876, § 27; Laws 2007, LB124, § 40.
Operative date September 1, 2007.

45-702 Terms, defined. For purposes of the Mortgage Bankers Registration and Licensing Act:

(1) Borrower means the mortgagor or mortgagors under a real estate mortgage or the trustor or trustors under a deed of trust;

(2) Branch office means any location at which the business of a mortgage banker is to be conducted, including (a) any offices physically located in Nebraska, (b) any offices that, while not physically located in this state, intend to transact business with Nebraska residents, and (c) any third-party or home-based locations that agents and representatives intend to use to transact business with Nebraska residents;

(3) Breach of security of the system means unauthorized acquisition of data that compromises the security, confidentiality, or integrity of the information maintained by a multistate licensing and application system, its affiliates, or subsidiaries;

(4) Control means the power, directly or indirectly, to direct the management or policies of a mortgage banking business, whether through ownership of securities, by contract, or otherwise. Any person who (a) is a director, a general partner, or an executive officer, including the president, chief executive officer, chief financial officer, chief operating officer, chief legal officer, chief compliance officer, and any individual with similar status and function, (b) directly or indirectly has the right to vote ten percent or more of a class of voting security or has the power to sell or direct the sale of ten percent or more of a class of voting securities, (c) in the case of a limited liability company, is a managing member, or (d) in the case of a partnership, has the right to receive, upon dissolution, or has contributed, ten percent or more of the capital, is presumed to control that mortgage banking business;

(5) Department means the Department of Banking and Finance;

(6) Director means the Director of Banking and Finance;

(7) Financial institution means any person organized or chartered under the laws of this state, any other state, or the United States relating to banks, savings institutions, trust companies, savings and loan associations, or credit unions. Financial institution also means an industrial loan and investment company chartered under the laws of any other state and subject to similar supervision and regulation as a bank chartered under the laws of this state;

(8) Licensee means any person licensed under the act;

(9) Mortgage banker means any person not exempt under section 45-703 who, for compensation or gain or in the expectation of compensation or gain, directly or indirectly makes, originates, services, negotiates, acquires, sells, arranges for, or offers to make, originate, service, negotiate, acquire, sell, or arrange for ten or more mortgage loans in a calendar year;

(10) Mortgage banking business means any person who employs a mortgage banker or mortgage bankers or who directly or indirectly makes, negotiates, acquires, sells, arranges for, or offers to make, originate, service, negotiate, acquire, sell, or arrange for ten or more mortgage loans in a calendar year for compensation or gain or in the expectation of compensation or gain;

(11) Mortgage loan means any loan or extension of credit secured by a lien on real property, including a refinancing of a contract of sale or an assumption or refinancing of a prior loan or extension of credit;

(12) Multistate licensing and application system means a residential real estate mortgage licensing system data base of which the department is a member;

(13) Offer means every attempt to provide, offer to provide, or solicitation to provide a mortgage loan or any form of mortgage banking business. Offer includes, but is not limited to, all general and public advertising, whether made in print, through electronic media, or by the Internet;

(14) Person means an association, joint venture, joint-stock company, partnership, limited partnership, limited liability company, business corporation, nonprofit corporation, individual, or any group of individuals however organized;

(15) Real property means an owner-occupied single-family, two-family, three-family, or four-family dwelling which is located in this state, which is occupied, used, or intended to be occupied or used for residential purposes, and which is, or is intended to be, permanently affixed to the land;

(16) Registered bank holding company means any bank holding company registered with the department pursuant to the Nebraska Bank Holding Company Act of 1995;

(17) Registrant means a person registered pursuant to section 45-704; and

(18) Service means accepting payments or maintenance of escrow accounts in the regular course of business in connection with a mortgage loan.

Source: Laws 1989, LB 272, § 5; Laws 1993, LB 217, § 1; Laws 1993, LB 121, § 274; Laws 1995, LB 163, § 2; Laws 1995, LB 384, § 17; Laws 1999, LB 396, § 30; Laws 2003, LB 131, § 29; Laws 2003, LB 218, § 1; Laws 2006, LB 876, § 28; Laws 2007, LB124, § 41.
Operative date September 1, 2007.

Cross Reference

Nebraska Bank Holding Company Act of 1995, see section 8-908.

45-705 License or registration required; application; fees; background investigation; registered agent. (1) No person shall act as a mortgage banker or use the title mortgage banker in this state unless he, she, or it is licensed or has registered with the department as provided in the Mortgage Bankers Registration and Licensing Act or is licensed under the Nebraska Installment Loan Act.

(2) Applicants for a license as a mortgage banker shall submit to the department an application on forms prescribed by the department. The application shall include, but not be limited to, (a) the applicant's corporate name and no more than one trade name or doing business as designation, if applicable, (b) the applicant's main office address, (c) all branch office addresses at which business is to be conducted, (d) the names and titles of each director and principal officer of the applicant, (e) the names of all shareholders, partners, or members of the applicant, (f) a description of the activities of the applicant in such detail as the department may require, and (g) if the applicant is an individual, his or her social security number.

(3) The application for a license as a mortgage banker shall include or be accompanied by, in a manner as prescribed by the director, (a) the name and street address in this state of a

registered agent appointed by the licensee for receipt of service of process and (b) the written consent of the registered agent to the appointment.

(4) The application for a license as a mortgage banker shall be accompanied by an application fee of four hundred dollars and, if applicable, a seventy-five-dollar fee for each branch office listed in the application and any processing fee allowed under subsection (3) of section 45-715.

(5) The director may prescribe that the application for a license as a mortgage banker include or be accompanied by, in a manner as prescribed by the director, a background investigation of each applicant by means of fingerprints and a check of his or her criminal history record information maintained by the Federal Bureau of Investigation through the Nebraska State Patrol. If the applicant is a partnership, association, corporation, or other form of business organization, the director may require a criminal history record information check on each member, director, or principal officer of each applicant or any individual acting in the capacity of the manager of an office location. The applicant shall be responsible for the direct costs associated with criminal history record information checks performed. The information obtained thereby may be used by the director to determine the applicant's eligibility for licensing under this section. Except as authorized pursuant to subsection (3) of section 45-715, receipt of criminal history record information by a private person or entity is prohibited.

(6) A license granted under the Mortgage Bankers Registration and Licensing Act shall not be assignable.

(7) An application is deemed filed when accepted as substantially complete by the director.

Source: Laws 1989, LB 272, § 8; Laws 1995, LB 163, § 3; Laws 1997, LB 752, § 118; Laws 2003, LB 218, § 3; Laws 2005, LB 533, § 52; Laws 2007, LB124, § 42.
Operative date September 1, 2007.

Cross Reference

Nebraska Installment Loan Act, see section 45-1001.

45-706 License; issuance; denial; appeal; renewal; fees. (1) Upon the filing of an application for a license, if the director finds that the character and general fitness of the applicant, the members thereof if the applicant is a partnership, limited liability company, association, or other organization, and the officers, directors, and principal employees if the applicant is a corporation are such that the business will be operated honestly, soundly, and efficiently in the public interest consistent with the purposes of the Mortgage Bankers Registration and Licensing Act, the director shall issue a license as a mortgage banker to the applicant. The director shall approve or deny an application for a license within ninety days after (a) acceptance of the application; (b) delivery of the bond required under section 45-709; and (c) payment of the required fee.

(2) If the director determines that the license should be denied, the director shall notify the applicant in writing of the denial and of the reasons for the denial. The director shall not deny an application for a license because of the failure to submit information required under the act or rules and regulations adopted and promulgated under the act without first giving

the applicant an opportunity to correct the deficiency by supplying the missing information. A decision of the director denying a license pursuant to the act may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act. The director may deny an application for a license if an officer, director, shareholder owning five percent or more of the voting shares of the applicant, partner, or member was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (a) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (b) any felony under state or federal law.

(3)(a) All initial licenses shall remain in full force and effect until the next succeeding March 1. Beginning January 1, 2008, initial licenses shall remain in full force and effect until the next succeeding December 31. Thereafter, licenses may be renewed annually by filing with the director an application for renewal containing such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications, including the information required by subsection (3) of section 45-705.

(b) Except as provided in subdivision (3)(c) of this section, for the annual renewal of a license to conduct a mortgage banking business under the Mortgage Bankers Registration and Licensing Act, the fee shall be two hundred dollars plus seventy-five dollars for each branch office, if applicable, and any processing fee allowed under subsection (3) of section 45-715.

(c) Licenses which expire on March 1, 2008, shall be renewed until December 31, 2008, upon compliance with subdivision (3)(a) of this section. For such renewals, the department shall prorate the fees provided in subdivision (3)(b) of this section using a factor of ten-twelfths.

(4) The director may require a licensee to maintain a minimum net worth, proven by an audit conducted by a certified public accountant, if the director determines that the financial condition of the licensee warrants such a requirement or that the requirement is in the public interest.

Source: Laws 1989, LB 272, § 9; Laws 1993, LB 121, § 275; Laws 1995, LB 163, § 4; Laws 2003, LB 218, § 4; Laws 2005, LB 533, § 53; Laws 2006, LB 876, § 29; Laws 2007, LB124, § 43.
Operative date September 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

45-708 Prohibited acts; penalty. (1) Any person required to be licensed or registered under the Mortgage Bankers Registration and Licensing Act who, without first obtaining a license or registration under the act or while such license is suspended, revoked, canceled, or expired by the director, engages in the business of or occupation of, advertises or holds himself or herself out as, claims to be, or temporarily acts as a mortgage banker in this state is guilty of a Class II misdemeanor.

(2) Any individual who has been convicted of, pleaded guilty to, or been found guilty after a plea of nolo contendere to (a) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (b) any felony under state or federal law, and is employed by or maintains a contractual relationship as an agent of, any person required to be licensed or registered under the Mortgage Bankers Registration and Licensing Act, is guilty of a Class I misdemeanor.

Source: Laws 1989, LB 272, § 11; Laws 1999, LB 396, § 34; Laws 2007, LB124, § 44.
Operative date September 1, 2007.

45-710 Director; investigate complaints; request for information; costs; confidentiality. (1) The director may examine documents and records maintained by a licensee. The director may investigate complaints about a licensee. The director may investigate reports of alleged violations of the Mortgage Bankers Registration and Licensing Act or any rule, regulation, or order of the director under the act.

(2) Upon receipt by a licensee of the director's notice of investigation or inquiry request for information, the licensee shall respond within twenty-one calendar days. Each day beyond that time a licensee fails to respond as required by this subsection shall constitute a separate violation of the Mortgage Bankers Registration and Licensing Act. This subsection shall not be construed to require the director to send a notice of investigation to a licensee or any person.

(3) In conducting an examination under this section, the director may rely on reports made by the licensee which have been prepared within the preceding twelve months for the following federal agencies or federally related entities:

- (a) The United States Department of Housing and Urban Development;
- (b) The Federal Housing Administration;
- (c) The Federal National Mortgage Association;
- (d) The Government National Mortgage Association;
- (e) The Federal Home Loan Mortgage Corporation; or
- (f) The United States Department of Veterans Affairs.

(4) If the director receives a complaint or other information concerning noncompliance with the Mortgage Bankers Registration and Licensing Act by an exempt person, the director shall inform the agency having supervisory authority over the exempt person of the complaint.

(5) The total charge for an examination or investigation shall be paid by the licensee as set forth in sections 8-605 and 8-606.

(6) Examination reports shall not be deemed public records and may be withheld from the public pursuant to section 84-712.05.

(7) Complaint files shall be deemed public records.

Source: Laws 1989, LB 272, § 13; Laws 1993, LB 217, § 3; Laws 1995, LB 163, § 5; Laws 2003, LB 218, § 7; Laws 2007, LB124, § 45.
Operative date September 1, 2007.

45-711 Licensee; duties. A licensee shall:

(1) Disburse required funds paid by the borrower and held in escrow for the payment of insurance payments no later than the date upon which the premium is due under the insurance policy;

(2) Disburse funds paid by the borrower and held in escrow for the payment of real estate taxes prior to the time such real estate taxes become delinquent;

(3) Pay any penalty incurred by the borrower because of the failure of the licensee to make the payments required in subdivisions (1) and (2) of this section unless the licensee establishes that the failure to timely make the payments was due solely to the fact that the borrower was sent a written notice of the amount due more than fifteen calendar days before the due date to the borrower's last-known address and failed to timely remit the amount due to the licensee;

(4) At least annually perform a complete escrow analysis. If there is a change in the amount of the periodic payments, the licensee shall mail written notice of such change to the borrower at least twenty calendar days before the effective date of the change in payment. The following information shall be provided to the borrower, without charge, in one or more reports, at least annually:

(a) The name and address of the licensee;

(b) The name and address of the borrower;

(c) A summary of the escrow account activity during the year which includes all of the following:

(i) The balance of the escrow account at the beginning of the year;

(ii) The aggregate amount of deposits to the escrow account during the year; and

(iii) The aggregate amount of withdrawals from the escrow account for each of the following categories:

(A) Payments applied to loan principal;

(B) Payments applied to interest;

(C) Payments applied to real estate taxes;

(D) Payments for real property insurance premiums; and

(E) All other withdrawals; and

(d) A summary of loan principal for the year as follows:

(i) The amount of principal outstanding at the beginning of the year;

(ii) The aggregate amount of payments applied to principal during the year; and

(iii) The amount of principal outstanding at the end of the year;

(5) Establish and maintain a toll-free telephone number or accept collect telephone calls to respond to inquiries from borrowers, if the licensee services mortgage loans. If a licensee ceases to service mortgage loans, it shall continue to maintain a toll-free telephone number or accept collect telephone calls to respond to inquiries from borrowers for a period of twelve months after the date the licensee ceased to service mortgage loans. A telephonic messaging service which does not permit the borrower an option of personal contact with an employee, agent, or contractor of the licensee shall not satisfy the conditions of this section. Each day

such licensee fails to comply with this subdivision shall constitute a separate violation of the Mortgage Bankers Registration and Licensing Act;

(6) Answer in writing, within ten business days after receipt, any written request for payoff information received from a borrower or a borrower's designated representative. This service shall be provided without charge to the borrower, except that when such information is provided upon request within sixty days after the fulfillment of a previous request, a processing fee of up to ten dollars may be charged;

(7) Execute and deliver a release of mortgage pursuant to the provisions of section 76-252 or, in the case of a trust deed, execute and deliver a reconveyance pursuant to the provisions of section 76-1014.01;

(8) Maintain a copy of all documents and records relating to each mortgage loan and application for a mortgage loan, including, but not limited to, loan applications, federal Truth in Lending Act statements, good faith estimates, appraisals, notes, rights of rescission, and mortgages or trust deeds for a period of two years after the date the mortgage loan is funded or the loan application is denied or withdrawn; and

(9) Notify the director in writing within thirty days after the occurrence of any material development, including, but not limited to:

(a) The filing of a voluntary petition in bankruptcy or notice of a filing of an involuntary petition in bankruptcy;

(b) Business reorganization;

(c) The institution of license suspension or revocation procedures by any other state or jurisdiction;

(d) The filing of a criminal indictment or information against the licensee or any of its officers, directors, shareholders, partners, members, employees, or agents;

(e) The licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (ii) any felony under state or federal law;

(f) A change of name, trade name, doing business as designation, or main office address;

(g) The establishment of a branch office. Notice of such establishment shall be on forms prescribed by the department and accompanied by a fee of seventy-five dollars for each branch office; or

(h) The closing of a branch office.

Source: Laws 1989, LB 272, § 14; Laws 1994, LB 1275, § 4; Laws 1995, LB 163, § 6; Laws 1995, LB 396, § 1; Laws 1996, LB 1053, § 11; Laws 2003, LB 218, § 8; Laws 2005, LB 533, § 55; Laws 2007, LB124, § 46.
Operative date September 1, 2007.

45-714 Prohibited acts; violation; penalty; civil liability. (1) A licensee, an officer, an employee, or an agent of the licensee shall not:

- (a) Assess a late charge if all payments due are received before the date upon which late charges are authorized in the underlying mortgage or deed of trust or other loan documents;
- (b) Delay closing of a mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;
- (c) Misrepresent or conceal material facts or make false promises intended to influence, persuade, or induce an applicant for a mortgage loan or a borrower to take a mortgage loan or cause or contribute to such a misrepresentation by any person acting on a licensee's or any other lender's behalf;
- (d) Misrepresent to, or conceal from, an applicant for a mortgage loan or a borrower material facts, terms, or conditions of a mortgage loan to which the licensee is a party;
- (e) Engage in any transaction, practice, or business conduct that is not in good faith or that operates a fraud upon any person in connection with the making of any mortgage loan;
- (f) Receive compensation for acting as a mortgage banker if the licensee has otherwise acted as a real estate broker or agent in connection with the sale of the real estate which secures the mortgage loan unless the licensee has provided written disclosure to the person from whom compensation is collected that the licensee is receiving compensation both for acting as a mortgage banker and for acting as a real estate broker or agent;
- (g) Advertise, display, distribute, broadcast, televise, or cause or permit to be advertised, displayed, distributed, broadcasted, or televised, in any manner, including by the Internet, any false, misleading, or deceptive statement or representation with regard to rates, terms, or conditions for a mortgage loan or any false, misleading, or deceptive statement regarding the qualifications of the licensee or of any officer, employee, or agent thereof;
- (h) Record a lien on real property if money is not available for the immediate disbursement to the borrower unless, before that recording, the licensee (i) informs the borrower in writing of the reason for the delay and of a definite date by which disbursement shall be made and (ii) obtains the borrower's written permission for the delay unless the delay is required by any other state or federal law;
- (i) Fail to account for or deliver to any person personal property obtained in connection with the mortgage banking business, including, but not limited to, money, funds, deposits, checks, drafts, mortgages, or other documents or things of value which the licensee was not entitled to retain;
- (j) Fail to disburse, without just cause, any funds in accordance with any agreement connected with the mortgage banking business;
- (k) Collect fees and charges on funds other than new funds if the licensee makes a mortgage loan to refinance an existing mortgage loan to a current borrower of the licensee within twelve months after the previous mortgage loan made by the licensee;
- (l) Assess any fees against the borrower other than those which are reasonable and necessary, including actual charges incurred in connection with the making, closing, disbursing, servicing, extending, transferring, or renewing of a loan, including, but not limited to, (i) prepayment charges, (ii) delinquency charges, (iii) premiums for hazard, private

mortgage, disability, life, or title insurance, (iv) fees for escrow services, appraisal services, abstracting services, title services, surveys, inspections, credit reports, notary services, and recording of documents, (v) origination fees, (vi) interest on interest after default, and (vii) costs and charges incurred for determining qualification for the loan proceeds and disbursement of the loan proceeds;

(m) Allow the borrower to finance, directly or indirectly, (i) any credit life, credit accident, credit health, credit personal property, or credit loss-of-income insurance or debt suspension coverage or debt cancellation coverage, whether or not such coverage is insurance under applicable law, that provides for cancellation of all or part of a borrower's liability in the event of loss of life, health, personal property, or income or in the case of accident written in connection with a mortgage loan or (ii) any life, accident, health, or loss-of-income insurance without regard to the identity of the ultimate beneficiary of such insurance. For purposes of this section, any premiums or charges calculated and paid on a periodic basis that are not added to the principal of the loan shall not be considered financed directly or indirectly by the creditor;

(n) Falsify any documentation relating to a mortgage loan or a mortgage loan application;

(o) Recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a mortgage loan that refinances all or any portion of such existing loan or debt;

(p) Borrow money from, personally loan money to, or guarantee any loan made to any customer or applicant for a mortgage loan; or

(q) Obtain a signature on a document required to be notarized in connection with a mortgage loan or a mortgage loan application unless the qualified notary public performing the notarization is physically present at the time the signature is obtained.

(2) Any person who violates any provision of subsection (1) of this section is guilty of a Class III misdemeanor.

(3) Any person who violates any provision of subsection (1) of this section is liable to the applicant for a mortgage loan or to the borrower for the fees, costs, and charges incurred in connection with obtaining or attempting to obtain the mortgage loan, damages resulting from such violation, interest on the damage from the date of the violation, and court costs, including reasonable attorney's fees.

Source: Laws 1989, LB 272, § 17; Laws 2003, LB 218, § 9; Laws 2006, LB 876, § 32; Laws 2007, LB124, § 47.
Operative date September 1, 2007.

45-715 Department; duties; rules and regulations; multistate licensing and application system. (1) The department shall be responsible for the administration and enforcement of the Mortgage Bankers Registration and Licensing Act.

(2) The department may adopt and promulgate such rules and regulations as it may deem necessary in the administration of the act and not inconsistent with the act. The department shall make a good faith effort to provide a copy of the notice of hearing as required by section 84-907 in a timely manner to all licensees. Such notice may be sent electronically to licensees.

(3) The department may participate in a multistate licensing and application system for mortgage lenders and mortgage bankers involving one or more states, the District of Columbia, or the Commonwealth of Puerto Rico. The system shall be established to facilitate the sharing of regulatory information and the licensing and application processes, by electronic or other means. The department may allow such system to collect licensing fees on behalf of the department, allow such system to collect a processing fee for the services of the system directly from each applicant for a license, and allow such system to process and maintain records on behalf of the department, including information collected pursuant to subsection (5) of section 45-705.

Source: Laws 1989, LB 272, § 18; Laws 2003, LB 218, § 10; Laws 2007, LB124, § 48.
Operative date September 1, 2007.

45-716 Money collected; disposition. (1) All fees, charges, and costs collected by the department pursuant to the Mortgage Bankers Registration and Licensing Act shall be remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund.

(2) All fines collected by the department pursuant to the Mortgage Bankers Registration and Licensing Act shall be remitted to the State Treasurer for credit to the permanent school fund.

Source: Laws 1989, LB 272, § 19; Laws 1994, LB 1066, § 32; Laws 1995, LB 163, § 7; Laws 1995, LB 599, § 14; Laws 2003, LB 218, § 11; Laws 2007, LB124, § 51.
Operative date September 1, 2007.

45-722 Acquisition of control of mortgage banking business; procedure; disapproval; hearing. (1) No person acting personally or as an agent shall acquire control of any mortgage banking business required to be licensed under the Mortgage Bankers Registration and Licensing Act without first giving sixty days' notice to the department on forms prescribed by the department of such proposed acquisition and paying a filing fee of two hundred dollars.

(2) The director, upon receipt of such notice, shall act upon it within thirty days and, unless he or she disapproves the proposed acquisition within that period of time, the acquisition shall become effective on the sixty-first day after receipt without the director's approval, except that the director may extend the thirty-day period an additional thirty days if, in his or her judgment, any material information submitted is substantially inaccurate or the acquiring party has not furnished all the information required by the department.

(3) An acquisition may be made prior to the expiration of the disapproval period if the director issues written notice of his or her intent not to disapprove the action.

(4)(a) The director may disapprove any proposed acquisition if:

(i) The financial condition of any acquiring person is such as might jeopardize the financial stability of the acquired mortgage banking business;

(ii) The character and general fitness of any acquiring person or of any of the proposed management personnel indicates that the acquired mortgage banking business would not be operated honestly, soundly, or efficiently in the public interest; or

(iii) Any acquiring person neglects, fails, or refuses to furnish all information required by the department.

(b) The director shall notify the acquiring party in writing of disapproval of the acquisition. The notice shall provide a statement of the basis for the disapproval.

(c) Within fifteen business days after receipt of written notice of disapproval, the acquiring party may request a hearing on the proposed acquisition in accordance with the Administrative Procedure Act. At the conclusion of such hearing, the director shall, by order, approve or disapprove the proposed acquisition on the basis of the record made at the hearing.

Source: Laws 2007, LB124, § 49.
Operative date September 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

45-723 License under multistate licensing and application system; department; powers and duties. (1) The department may require that a mortgage banker supply all or part of the information that must be provided to obtain a license pursuant to a multistate licensing and application system data base consistent with, and in compliance with, the Mortgage Bankers Registration and Licensing Act. Nothing in this subsection shall authorize the director to require any person exempt from licensure under the act or the employees or agents of any such person to submit information to or participate in the multistate licensing and application system.

(2) Except for the department, no person shall be authorized to obtain information from a multistate licensing and application system data base or initiate any civil action based on information obtained from such data base, if such information is not currently available to such person under section 8-112 or 45-710.

(3) The department shall ensure that a multistate licensing and application system adopts a privacy, data security, and security breach notification policy. The director shall make available upon written request a copy of the contract between the department and a multistate licensing and application system pertaining to the breach of security of the system provisions.

(4) The department shall upon written request provide the most recently available audited financial report of the multistate licensing and application system.

Source: Laws 2007, LB124, § 50.
Operative date September 1, 2007.

ARTICLE 9

DELAYED DEPOSIT SERVICES LICENSING ACT

Section.

45-920. Director; examination of licensee; costs.

45-927. Fees, charges, costs, and fines; distribution.

45-920 Director; examination of licensee; costs. The director shall examine the books, accounts, and records of each licensee no more often than annually, except as provided in section 45-921. The costs of the director incurred in an examination shall be paid by the licensee as set forth in sections 8-605 and 8-606.

Source: Laws 1994, LB 967, § 20; Laws 2007, LB124, § 52.
Operative date September 1, 2007.

45-927 Fees, charges, costs, and fines; distribution. All fees, charges, costs, and fines collected by the director under the Delayed Deposit Services Licensing Act shall be remitted to the State Treasurer. Fees, charges, and costs shall be credited to the Financial Institution Assessment Cash Fund, and fines shall be credited to the permanent school fund.

Source: Laws 1994, LB 967, § 27; Laws 1995, LB 599, § 15; Laws 2007, LB124, § 53.
Operative date September 1, 2007.

ARTICLE 10

NEBRASKA INSTALLMENT LOAN ACT

Section.

45-1013. Installment loans; license; renewal; fees; relocation of place of business; procedure; hearing; fee.

45-1014. Installment loans; fees; disposition.

45-1017. Licensees; business, records, and accounts; inspection; expenses; fines; lien.

45-1033. License; administrative fine; disciplinary actions; failure to renew.

45-1013 Installment loans; license; renewal; fees; relocation of place of business; procedure; hearing; fee. (1) For the annual renewal of an original license under the Nebraska Installment Loan Act, the licensee shall file with the department a fee of two hundred fifty dollars and a renewal application containing such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications.

(2) For the relocation of its place of business, a licensee shall file with the department a fee of one hundred fifty dollars and an application containing such information as the director may require to determine whether the relocation should be approved. Upon receipt of the fee and application, the director shall publish a notice of the filing of the application in a newspaper of general circulation in the county where the licensee proposes to relocate. If the director receives any substantive objection to the proposed relocation within fifteen days after publication of such notice, he or she shall hold a hearing on the application in accordance with the Administrative Procedure Act. The expense of any publication required by this section shall be paid by the applicant licensee.

Source: Laws 1941, c. 90, § 6, p. 347; C.S.Supp.,1941, § 45-134; R.S.1943, § 45-126; Laws 1973, LB 39, § 2; Laws 1995, LB 599, § 9; Laws 1997, LB 555, § 10; R.S.1943, (1998), § 45-126; Laws 2001, LB 53, § 41; Laws 2005, LB 533, § 60; Laws 2007, LB124, § 54.
Operative date September 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

45-1014 Installment loans; fees; disposition. All original license fees and annual renewal fees shall be collected by the department and remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund. All investigation and examination fees, charges, and costs collected by or paid to the department shall likewise be remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund and shall be available for the uses and purposes of the fund.

Source: Laws 1941, c. 90, § 26, p. 355; C.S.Supp.,1941, § 45-154; R.S.1943, § 45-127; Laws 1969, c. 584, § 46, p. 2373; Laws 1973, LB 39, § 3; Laws 1994, LB 967, § 31; Laws 1995, LB 7, § 41; Laws 1995, LB 599, § 10; R.S.1943, (1998), § 45-127; Laws 2001, LB 53, § 42; Laws 2007, LB124, § 55.
Operative date September 1, 2007.

45-1017 Licensees; business, records, and accounts; inspection; expenses; fines; lien. (1) The department shall inspect the business, records, and accounts of all persons that lend money subject to the Nebraska Installment Loan Act. The department may examine or investigate complaints about or reports of alleged violations by a licensee made to the department. The department may inspect and investigate the business, records, and accounts of all persons in the public business of lending money contrary to the act and who do not have a license under the act. The director may appoint examiners who shall, under his or her direction, investigate the loans and business and examine the books and records of licensees annually and more often as determined by the director. The expenses incurred by the department in examining the books and records of licensees and in administering the act during each calendar year shall be paid by the licensee as set forth in sections 8-605 and 8-606.

(2) Upon receipt by a licensee of a notice of investigation or inquiry request for information from the department, the licensee shall respond within twenty-one calendar days. Each day a licensee fails to respond as required by this subsection constitutes a separate violation.

(3) If the director finds, after notice and opportunity for hearing in accordance with the Administrative Procedure Act, that any person has willfully and intentionally violated any provision of the Nebraska Installment Loan Act, any rule or regulation adopted and promulgated under the act, or any order issued under the act, the director may order such person to pay (a) an administrative fine of not more than one thousand dollars for each separate violation and (b) the costs of investigation. All fines collected by the department pursuant to this subsection shall be remitted to the State Treasurer for credit to the permanent school fund.

(4) If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to subsection (3) of this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered in a civil action by the director. The lien shall attach to the real property of such person when notice

of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law. Failure of the person to pay such fine and costs constitutes a separate violation of the act.

Source: Laws 1941, c. 90, § 25, p. 355; C.S.Supp.,1941, § 45-153; R.S.1943, § 45-130; Laws 1997, LB 137, § 21; Laws 1997, LB 555, § 13; Laws 1999, LB 396, § 27; R.S.Supp.,2000, § 45-130; Laws 2001, LB 53, § 45; Laws 2004, LB 999, § 38; Laws 2007, LB124, § 56.
Operative date September 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

45-1033 License; administrative fine; disciplinary actions; failure to renew. (1)

The director may, following a hearing under the Administrative Procedure Act, suspend or revoke any license issued pursuant to the Nebraska Installment Loan Act. The director may also impose an administrative fine on the licensee for each separate violation of the act. The director may take one or more of these actions if the director finds:

(a) The licensee has materially violated or demonstrated a continuing pattern of violating the Nebraska Installment Loan Act or rules and regulations adopted and promulgated under the act, any order issued under the act, or any other state or federal law applicable to the conduct of its business;

(b) A fact or condition exists which, if it had existed at the time of the original application for the license, would have warranted the director to deny the application;

(c) The licensee has violated a voluntary consent or compliance agreement which had been entered into with the director;

(d) The licensee has knowingly provided or caused to be provided to the director any false or fraudulent representation of a material fact or any false or fraudulent financial statement or suppressed or withheld from the director any information which, if submitted by the licensee, would have resulted in denial of the license application;

(e) The licensee has refused to permit an examination by the director of the licensee's business, records, and accounts pursuant to subsection (1) of section 45-1017 or refused or failed to comply with subsection (2) of section 45-1017 or failed to make any report required under section 45-1018. Each day the licensee continues in violation of this subdivision constitutes a separate violation;

(f) The licensee has failed to maintain records as required by the director following written notice. Each day the licensee continues in violation of this subdivision constitutes a separate violation;

(g) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual has been convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or

which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (ii) any felony under state or federal law;

(h) The licensee has violated the written restrictions or conditions under which the license was issued; or

(i) The licensee, or if the licensee is a business entity, one of the officers, directors, members, partners, or controlling shareholders, was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (ii) any felony under state or federal law.

(2) Except as provided in this section, a license shall not be revoked or suspended except after notice and a hearing in accordance with the Administrative Procedure Act.

(3)(a) If a licensee fails to renew its license as required by subsection (1) of section 45-1013 and does not voluntarily surrender the license pursuant to section 45-1032, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

(b) If a licensee fails to maintain a surety bond as required by section 45-1007, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(4) Revocation, suspension, cancellation, or expiration of a license shall not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a borrower.

(5) Revocation, suspension, cancellation, or expiration of a license shall not affect civil or criminal liability for acts committed before the revocation, suspension, cancellation, or expiration or liability for any fines which may be imposed against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to this section or section 45-1069 for acts committed before the surrender.

Source: Laws 2001, LB 53, § 61; Laws 2003, LB 218, § 16; Laws 2005, LB 533, § 63; Laws 2007, LB124, § 57.
Operative date September 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

CHAPTER 46

IRRIGATION AND REGULATION OF WATER

Article.

2. General Provisions.
 - (e) Adjudication of Water Rights. 46-229.04.
 - (q) Storm Water Management Plan Program. 46-2,139.
6. Ground Water.
 - (a) Registration of Water Wells. 46-601.01 to 46-609.
 - (d) Municipal and Rural Domestic Ground Water Transfers Permit Act. 46-644.
7. Nebraska Ground Water Management and Protection Act. 46-702 to 46-724.
10. Rural Water District. 46-1011, 46-1018.
12. Water Well Standards and Contractors' Licensing. 46-1201 to 46-1241.

ARTICLE 2

GENERAL PROVISIONS

(e) ADJUDICATION OF WATER RIGHTS

Section.

46-229.04. Appropriations; hearing; decision; nonuse; considerations; consolidation of proceedings; when.

(q) STORM WATER MANAGEMENT PLAN PROGRAM

46-2,139. Storm Water Management Plan Program; created; assistance to cities and counties; grants; Department of Environmental Quality; duties.

(e) ADJUDICATION OF WATER RIGHTS

46-229.04 Appropriations; hearing; decision; nonuse; considerations; consolidation of proceedings; when. (1) At a hearing held pursuant to section 46-229.03, the verified field investigation report of an employee of the department, or such other report or information that is relied upon by the department to reach the preliminary determination of nonuse, shall be prima facie evidence for the forfeiture and annulment of such water appropriation. If no person appears at the hearing, such water appropriation or unused part thereof shall be declared forfeited and annulled. If an interested person appears and contests the same, the department shall hear evidence, and if it appears that such water has not been put to a beneficial use or has ceased to be used for such purpose for more than five consecutive years, the same shall be declared canceled and annulled unless the department finds that (a) there has been sufficient cause for such nonuse as provided for in subsection (2), (3), or (4) of this section or (b) subsection (5) or (6) of this section applies.

(2) Sufficient cause for nonuse shall be deemed to exist for up to thirty consecutive years if such nonuse was caused by the unavailability of water for that use. For a river basin, subbasin, or reach that has been designated as overappropriated pursuant to section 46-713 or

determined by the department to be fully appropriated pursuant to section 46-714, the period of time within which sufficient cause for nonuse because of the unavailability of water may be deemed to exist may be extended beyond thirty years by the department upon petition therefor by the owner of the appropriation if the department determines that an integrated management plan being implemented in the river basin, subbasin, or reach involved is likely to result in restoration of a usable water supply for the appropriation.

(3) Sufficient cause for nonuse shall be deemed to exist indefinitely if such nonuse was the result of one or more of the following:

(a) For any tract of land under separate ownership, the available supply was used but on only part of the land under the appropriation because of an inadequate water supply;

(b) The appropriation is a storage appropriation and there was an inadequate water supply to provide the water for the storage appropriation or less than the full amount of the storage appropriation was needed to keep the reservoir full; or

(c) The appropriation is a storage-use appropriation and there was an inadequate water supply to provide the water for the appropriation or use of the storage water was unnecessary because of climatic conditions.

(4) Sufficient cause for nonuse shall be deemed to exist for up to fifteen consecutive years if such nonuse was a result of one or more of the following:

(a) Federal, state, or local laws, rules, or regulations temporarily prevented or restricted such use;

(b) Use of the water was unnecessary because of climatic conditions;

(c) Circumstances were such that a prudent person, following the principles of good husbandry, would not have been expected to use the water;

(d) The works, diversions, or other facilities essential to use the water were destroyed by a cause not within the control of the owner of the appropriation and good faith efforts to repair or replace the works, diversions, or facilities have been and are being made;

(e) The owner of the appropriation was in active involuntary service in the armed forces of the United States or was in active voluntary service during a time of crisis;

(f) Legal proceedings prevented or restricted use of the water; or

(g) The land subject to the appropriation is under an acreage reserve program or production quota or is otherwise withdrawn from use as required for participation in any federal or state program or such land previously was under such a program but currently is not under such a program and there have been not more than five consecutive years of nonuse on that land since that land was last under that program.

The department may specify by rule and regulation other circumstances that shall be deemed to constitute sufficient cause for nonuse for up to fifteen years.

(5) When an appropriation is held in the name of an irrigation district, a reclamation district, a public power and irrigation district, a mutual irrigation company or canal company, or the United States Bureau of Reclamation and the director determines that water under that appropriation has not been used on a specific parcel of land for more than five years and

that no sufficient cause for such nonuse exists, the right to use water under that appropriation on that parcel shall be terminated and notice of the termination shall be posted on the department's web site and shall be given in the manner provided in subsection (2), (3), or (4) of section 46-229.03. The district or company holding such right shall have five years after the determination, or five years after an order of cancellation issued by the department following the filing of a voluntary relinquishment of the water appropriation that has been signed by the landowner and the appropriator of record, to assign the right to use that portion of the appropriation to other land within the district or the area served by the company, to file an application for a transfer in accordance with section 46-290, or to transfer the right in accordance with sections 46-2,127 to 46-2,129. The department shall issue its order of cancellation within sixty days after receipt of the voluntary relinquishment unless the relinquishment is conditioned by the landowner upon an action of a governmental agency. If the relinquishment contains such a provision, the department shall issue its order of cancellation within sixty days after receipt of notification that such action has been completed. The department shall be notified of any such assignment within thirty days after such assignment. If the district or company does not assign the right to use that portion of the appropriation to other land, does not file an application for a transfer within the five-year period, or does not notify the department within thirty days after any such assignment, that portion of the appropriation shall be canceled without further proceedings by the department and the district or company involved shall be so notified by the department. During the time within which assignment of a portion of an appropriation is pending, the allowable diversion rate for the appropriation involved shall be reduced, as necessary, to avoid inconsistency with the rate allowed by section 46-231 or with any greater rate previously approved for such appropriation by the director in accordance with section 46-229.06.

(6) When it is determined by the director that an appropriation, for which the location of use has been temporarily transferred in accordance with sections 46-290 to 46-294, has not been used at the new location for more than five years and that no sufficient cause for such nonuse exists, the right to use that appropriation at the temporary location of use shall be terminated. Notice of that termination shall be posted on the department's web site and shall be given in the manner provided in subsection (2), (3), or (4) of section 46-229.03. The right to reinstate use of that appropriation at the location of use prior to the temporary transfer shall continue to exist for five years after the director's determination, but if such use is not reinstated at that location within such five-year period, the appropriation shall be subject to cancellation in accordance with sections 46-229 to 46-229.04.

(7) If at the time of a hearing conducted in accordance with subsection (1) of this section there is an application for incidental or intentional underground water storage pending before the department and filed by the owner of the appropriation, the proceedings shall be consolidated.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 9, p. 837; C.S.1922, § 8428; C.S.1929, § 81-6309; R.S.1943, § 46-229; Laws 1947, c. 172, § 1(5), p. 521; Laws 1973, LB 186, § 6; Laws 1983, LB 380, § 3; Laws 1987, LB 140, § 4; Laws 1987, LB 356, § 1; Laws 1995, LB 350, § 3; Laws 2000, LB 900, § 100; Laws 2004, LB 962, § 9; Laws 2006, LB 1226, § 9; Laws 2007, LB701, § 15. Effective date May 2, 2007.

(q) STORM WATER MANAGEMENT PLAN PROGRAM

46-2,139 Storm Water Management Plan Program; created; assistance to cities and counties; grants; Department of Environmental Quality; duties. The Storm Water Management Plan Program is created. The purpose of the program is to facilitate and fund the duties of cities and counties under the federal Clean Water Act, 33 U.S.C. 1251 et seq., as such act existed on January 1, 2006, regarding storm water runoff under the National Pollutant Discharge Elimination System requirements. The Storm Water Management Plan Program shall function as a grant program administered by the Department of Environmental Quality, using funds appropriated for the program. The department shall deduct from funds appropriated amounts sufficient to reimburse itself for its costs of administration of the grant program. Any city or county when applying for a grant under the program shall have a storm water management plan approved by the department which meets the requirements of the National Pollutant Discharge Elimination System. Grant applications shall be made to the department on forms prescribed by the department. Grant funds shall be distributed by the department as follows:

(1) Not less than eighty percent of the funds available for grants under this section shall be provided to cities and counties in urbanized areas, as identified in 64 Federal Register 68822, that apply for grants and meet the requirements of this section. Grants made pursuant to this subdivision shall be distributed proportionately based on the population of applicants within such category, as determined by the most recent federal census update or recount certified by the United States Department of Commerce, Bureau of the Census. For the purpose of distributing grant funds to a county pursuant to this subdivision, the proportion shall be based on the county population, less the population of city applicants within that county. Any funds available for grants under this subdivision and not awarded by the end of a calendar year shall be available for grants in the following year; and

(2) Not more than twenty percent of the funds available for grants under this section shall be provided to cities and counties outside of urbanized areas, as identified in 64 Federal Register 68822, with populations greater than ten thousand inhabitants as determined by the most recent federal census update or recount certified by the United States Department of Commerce, Bureau of the Census, that apply for grants and meet the requirements of this section. Grants under this subdivision shall be distributed proportionately based on the population of applicants within this category as determined by the most recent federal census update or recount certified by the United States Department of Commerce, Bureau of the Census. For the purpose of distributing grant funds to a county pursuant to this subdivision, the proportion shall be based on the county population, less the population of city applicants

within that county. Any funds available for grants pursuant to this subdivision which have not been awarded at the end of each calendar year shall be available for awarding grants pursuant to subdivision (1) of this section.

Any city or county receiving a grant under subdivision (1) or (2) of this section shall contribute matching funds equal to twenty percent of the grant amount.

Source: Laws 2006, LB 1226, § 6; Laws 2007, LB530, § 1.
Effective date September 1, 2007.

ARTICLE 6

GROUND WATER

(a) REGISTRATION OF WATER WELLS

Section.

46-601.01. Terms, defined.

46-602. Registration of water wells; forms; replacement; change in ownership; illegal water well; decommissioning required.

46-602.01. Water well in management area; duties; prohibited acts; penalty.

46-604. Registration form; copies; disposition.

46-609. Irrigation water wells; spacing; requirements; exceptions; new use of well; registration modification; approval.

(d) MUNICIPAL AND RURAL DOMESTIC GROUND WATER TRANSFERS PERMIT ACT

46-644. Permits; duration; revocation; procedure.

(a) REGISTRATION OF WATER WELLS

46-601.01 Terms, defined. For purposes of Chapter 46, article 6:

(1)(a) Water well means any excavation that is drilled, cored, bored, washed, driven, dug, jettied, or otherwise constructed for the purpose of exploring for ground water, monitoring ground water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from or injecting fluid as defined in section 81-1502 into the underground water reservoir.

(b) Water well includes any excavation made for any purpose if ground water flows into the excavation under natural pressure and a pump or other device is placed in the excavation for the purpose of withdrawing water from the excavation for irrigation. For such excavations, construction means placing a pump or other device into the excavation for the purpose of withdrawing water for irrigation.

(c) Water well does not include (i) any excavation made for obtaining or prospecting for oil or natural gas or for inserting media to repressure oil or natural gas bearing formations regulated by the Nebraska Oil and Gas Conservation Commission or (ii) any structure requiring a permit by the Department of Natural Resources used to exercise surface water appropriation; and

(2) Common carrier means any carrier of water including a pipe, canal, ditch, or other means of piping or adjoining water for irrigation purposes.

Source: Laws 1993, LB 131, § 2; Laws 1999, LB 92, § 1; Laws 2004, LB 962, § 34; Laws 2007, LB701, § 17. Effective date May 2, 2007.

Cross Reference

For additional definitions, see section 46-656.07.

46-602 Registration of water wells; forms; replacement; change in ownership; illegal water well; decommissioning required. (1) Each water well completed in this state on or after July 1, 2001, excluding test holes and dewatering wells to be used for less than ninety days, shall be registered with the Department of Natural Resources as provided in this section within sixty days after completion of construction of the water well. The licensed water well contractor as defined in section 46-1213 constructing the water well, or the owner of the water well if the owner constructed the water well, shall file the registration on a form made available by the department and shall also file with the department the information from the well log required pursuant to section 46-1241. The department shall, by January 1, 2002, provide licensed water well contractors with the option of filing such registration forms electronically. No signature shall be required on forms filed electronically. The fee required by subsection (3) of section 46-1224 shall be the source of funds for any required fee to a contractor which provides the on-line services for such registration. Any discount in the amount paid the state by a credit card, charge card, or debit card company or a third-party merchant bank for such registration fees shall be deducted from the portion of the registration fee collected pursuant to section 46-1224.

(2)(a) If the newly constructed water well is a replacement water well, the registration form shall include (i) the registration number of the water well being replaced, if applicable, and (ii) the date the original water well was decommissioned or a certification that the water well will be decommissioned within one hundred eighty days or a certification that the original water well will be modified and equipped to pump fifty gallons per minute or less and will be used only for livestock, monitoring, observation, or any other nonconsumptive use or de minimis use approved by the applicable natural resources district.

(b) For purposes of this section, replacement water well means a water well which is constructed to provide water for the same purpose as the original water well and is operating in accordance with any applicable permit from the department and any applicable rules and regulations of the natural resources district and, if the purpose is for irrigation, the replacement water well delivers water to the same tract of land served by the original water well and (i) replaces a decommissioned water well within one hundred eighty days after the decommissioning of the original water well, (ii) replaces a water well that has not been decommissioned but will not be used after construction of the new water well and the original water well will be decommissioned within one hundred eighty days after such construction, except that in the case of a municipal water well, the original municipal water well may be

used after construction of the new water well but shall be decommissioned within one year after completion of the replacement water well, or (iii) the original water well will continue to be used but will be modified and equipped within one hundred eighty days after such construction of the replacement water well to pump fifty gallons per minute or less and will be used only for livestock, monitoring, observation, or any other nonconsumptive or de minimis use approved by the applicable natural resources district.

(c) No water well shall be registered as a replacement water well until the Department of Natural Resources has received a properly completed notice of decommissioning for the water well being replaced on a form made available by the department, or properly completed notice, prepared in accordance with subsection (7) of this section, of the modification and equipping of the original water well to pump fifty gallons per minute or less for use only for livestock, monitoring, observation, or any other nonconsumptive or de minimis use approved by the applicable natural resources district. Such notices, as required, shall be completed by (i) the licensed water well contractor as defined in section 46-1213 who decommissions the water well or modifies and equips the water well, (ii) the licensed pump installation contractor as defined in section 46-1209 who decommissions the water well or modifies and equips the water well, or (iii) the owner if the owner decommissions a driven sandpoint well which is on land owned by him or her for farming, ranching, or agricultural purposes or as his or her place of abode. The Department of Health and Human Services shall, by rule and regulation, determine which contractor or owner shall be responsible for such notice in situations in which more than one contractor or owner may be required to provide notice under this subsection.

(3) For a series of two or more water wells completed and pumped into a common carrier as part of a single site plan for irrigation purposes, a registration form and a detailed site plan shall be filed for each water well. The registration form shall include the registration numbers of other water wells included in the series if such water wells are already registered.

(4) A series of water wells completed for purposes of installation of a ground heat exchanger for a structure for utilizing the geothermal properties of the ground shall be considered as one water well. One registration form and a detailed site plan shall be filed for each such series.

(5) One registration form shall be required along with a detailed site plan which shows the location of each such water well in the site and a log from each such water well for water wells constructed as part of a single site plan for (a) monitoring ground water, obtaining hydrogeologic information, or extracting contaminants from the ground, (b) water wells constructed as part of remedial action approved by the Department of Environmental Quality pursuant to section 66-1525, 66-1529.02, or 81-15,124, and (c) water well owners who have a permit issued pursuant to the Industrial Ground Water Regulatory Act and also have an underground injection control permit issued by the Department of Environmental Quality.

(6) The Department of Natural Resources shall be notified by the owner of any change in the ownership of a water well required to be registered under this section. Notification shall be in such form and include such evidence of ownership as the Director of Natural Resources by rule and regulation directs. The department shall use such notice to update the registration on file. The department shall not collect a fee for the filing of the notice.

(7) The licensed water well contractor or licensed pump installation contractor responsible therefor shall notify the department within sixty days on a form provided by the department of any pump installation or any modifications to the construction of the water well or pump, after the initial registration of the well. For a change of use resulting in modification and equipping of an original water well which is being replaced in accordance with subsection (2) of this section, the licensed water well contractor or licensed pump installation contractor shall notify the department within sixty days on a form provided by the department of the water well and pump modifications and equipping of the original water well. A water well owner shall notify the department within sixty days on a form provided by the department of any other changes or any inaccuracies in recorded water well information, including, but not limited to, changes in use. The department shall not collect a fee for the filing of the notice.

(8) Whenever a water well becomes an illegal water well as defined in section 46-706, the owner of the water well shall either correct the deficiency that causes the well to be an illegal water well or shall cause the proper decommissioning of the water well in accordance with rules and regulations adopted pursuant to the Water Well Standards and Contractors' Practice Act. The licensed water well contractor who decommissions the water well, the licensed pump installation contractor who decommissions the water well, or the owner if the owner decommissions a driven sandpoint well which is on land owned by him or her for farming, ranching, or agricultural purposes or as his or her place of abode, shall provide a properly completed notice of decommissioning to the Department of Natural Resources within sixty days. The Department of Health and Human Services shall, by rule and regulation, determine which contractor or owner shall be responsible for such notice in situations in which more than one contractor or owner may be required to provide notice under this subsection. The Department of Natural Resources shall not collect a fee for the filing of the notice.

(9) Except for water wells which are used solely for domestic purposes and were constructed before September 9, 1993, and for test holes and dewatering wells used for less than ninety days, each water well which was completed in this state before July 1, 2001, and which is not registered on that date shall be an illegal water well until it is registered with the Department of Natural Resources. Such registration shall be completed by a licensed water well contractor or by the current owner of the water well, shall be on forms provided by the department, and shall provide as much of the information required by subsections (1) through (5) of this section for registration of a new water well as is possible at the time of registration.

(10) Water wells which are or were used solely for injecting any fluid other than water into the underground water reservoir, which were constructed before July 16, 2004, and which have not been properly decommissioned on or before July 16, 2004, shall be registered on or before July 1, 2005.

(11) Water wells described in subdivision (1)(b) of section 46-601.01 shall be registered with the Department of Natural Resources as provided in subsection (1) of this section within sixty days after the water well is constructed. Water wells described in subdivision (1)(b) of

section 46-601.01 which were constructed prior to May 2, 2007, shall be registered within one hundred eighty days after such date.

Source: Laws 1957, c. 200, § 2, p. 702; Laws 1961, c. 230, § 1, p. 683; Laws 1967, c. 281, § 2, p. 760; Laws 1975, LB 577, § 20; Laws 1979, LB 204, § 2; Laws 1980, LB 643, § 1; Laws 1981, LB 246, § 1; Laws 1983, LB 23, § 1; Laws 1986, LB 886, § 1; Laws 1986, LB 310, § 42; Laws 1993, LB 131, § 3; Laws 1994, LB 981, § 6; Laws 1995, LB 145, § 1; Laws 1995, LB 871, § 3; Laws 1997, LB 30, § 2; Laws 1999, LB 92, § 2; Laws 2000, LB 900, § 170; Laws 2001, LB 667, § 3; Laws 2002, LB 458, § 2; Laws 2003, LB 242, § 5; Laws 2003, LB 245, § 6; Laws 2004, LB 962, § 35; Laws 2006, LB 508, § 2; Laws 2006, LB 1226, § 15; Laws 2007, LB 296, § 202; Laws 2007, LB 463, § 1140; Laws 2007, LB 701, § 18.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 202, with LB 463, section 1140, and LB 701, section 18, to reflect all amendments.

Note: The changes made by LB 701 became effective May 2, 2007. The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Industrial Ground Water Regulatory Act, see section 46-690.

Old wells not in use, duty to fill, see sections 54-311 and 54-315.

Water Well Standards and Contractors' Practice Act, see section 46-1201.

46-602.01 Water well in management area; duties; prohibited acts; penalty. Prior to commencing construction of or installation of a pump in a water well in a management area or completing a notice of modification and change of use in lieu of decommissioning of a water well as part of a water well replacement procedure, a licensed water well contractor as defined in section 46-1213 or a licensed pump installation contractor as defined in section 46-1209 shall take those steps necessary to satisfy himself or herself that the person for whom the well is to be constructed, the modification and change of use is to be completed, or the pump installed has obtained a permit as required by the Nebraska Ground Water Management and Protection Act. The permit issued by the natural resources district as required by the act may (1) further define a replacement water well in accordance with the act so long as any further definition is not inconsistent with section 46-602, (2) impose restrictions on consumptive use, or (3) impose additional restrictions based on historic consumptive use.

Any person who commences or causes construction of or installation of a pump in a water well for which the required permit has not been obtained or who knowingly furnishes false information regarding such permit shall be guilty of an offense punishable as provided in section 46-613.02.

Source: Laws 1981, LB 325, § 3; Laws 1993, LB 131, § 4; Laws 2001, LB 667, § 4; Laws 2006, LB 508, § 3; Laws 2007, LB 463, § 1141.
Operative date December 1, 2008.

Cross Reference

Nebraska Ground Water Management and Protection Act, see section 46-701.

46-604 Registration form; copies; disposition. The Director of Natural Resources shall retain the registration form required by section 46-602 and shall make a copy available to the natural resources district within which the water well is located, to the owner of the water well, and to the licensed water well contractor as defined in section 46-1213.

Source: Laws 1957, c. 200, § 4, p. 703; Laws 1961, c. 227, § 4, p. 673; Laws 1961, c. 230, § 3, p. 685; Laws 1986, LB 886, § 3; Laws 1993, LB 131, § 5; Laws 2000, LB 900, § 171; Laws 2001, LB 667, § 5; Laws 2007, LB463, § 1142.
Operative date December 1, 2008.

46-609 Irrigation water wells; spacing; requirements; exceptions; new use of well; registration modification; approval. (1) Except as otherwise provided by this section or section 46-610, no irrigation water well shall be constructed upon any land in this state within six hundred feet of any registered irrigation water well and no existing nonirrigation water well within six hundred feet of any registered irrigation water well shall be used for irrigation purposes. Such spacing requirement shall not apply to (a) any water well used to irrigate two acres or less or (b) any replacement irrigation water well if it is constructed within fifty feet of the irrigation water well being replaced and if the water well being replaced was constructed prior to September 20, 1957, and is less than six hundred feet from a registered irrigation water well.

(2) The spacing protection of subsection (1) of this section shall apply to an unregistered water well for a period of sixty days after completion of such water well.

(3) No person shall use a water well for purposes other than its registered purpose until the water well registration has been changed to the intended new use, except that a person may use a water well registered for purposes other than its intended purpose for use for livestock, monitoring, observation, or any other nonconsumptive or de minimis use approved by the applicable natural resources district. The change to a new use shall be made by filing a water well registration modification with the Department of Natural Resources and shall be approved only if the water well is in conformity with subsection (1) of this section and with section 46-651.

Source: Laws 1957, c. 201, § 2, p. 705; Laws 1972, LB 1238, § 1; Laws 1981, LB 146, § 3; Laws 1993, LB 131, § 8; Laws 2004, LB 962, § 36; Laws 2007, LB701, § 19.
Effective date May 2, 2007.

(d) MUNICIPAL AND RURAL DOMESTIC GROUND WATER TRANSFERS PERMIT ACT

46-644 Permits; duration; revocation; procedure. Permits granted by the Director of Natural Resources shall be valid for a period of five years after the granting of a permit and as long thereafter as the water for which the permit is granted is used. For the purposes of the Municipal and Rural Domestic Ground Water Transfers Permit Act, the commencement of construction of facilities to provide water for beneficial use shall be deemed the date of the commencement of beneficial use. If it appears that the holder of a permit granted under the act has not used water for a beneficial purpose and in accordance with the terms of the permit for more than five years, such permit may be revoked or modified by the director. The procedure for such revocation or modification shall be the same as that provided for in sections 46-229.02 to 46-229.05.

Source: Laws 1963, c. 276, § 7, p. 831; Laws 2000, LB 900, § 182; Laws 2007, LB701, § 20.
Effective date May 2, 2007.

ARTICLE 7

NEBRASKA GROUND WATER MANAGEMENT AND PROTECTION ACT

Section.

- 46-702. Declaration of intent and purpose; legislative findings.
- 46-705. Act; how construed.
- 46-707. Natural resources district; powers; enumerated.
- 46-715. River basin, subbasin, or reach; integrated management plan; considerations; contents; amendment; technical analysis; forecast of water available from streamflow.
- 46-724. Contamination; not point source; Director of Environmental Quality; duties; hearing; notice.

46-702 Declaration of intent and purpose; legislative findings. The Legislature finds that ownership of water is held by the state for the benefit of its citizens, that ground water is one of the most valuable natural resources in the state, and that an adequate supply of ground water is essential to the general welfare of the citizens of this state and to the present and future development of agriculture in the state. The Legislature recognizes its duty to define broad policy goals concerning the utilization and management of ground water and to ensure local implementation of those goals. The Legislature also finds that natural resources districts have the legal authority to regulate certain activities and, except as otherwise specifically provided by statute, as local entities are the preferred regulators of activities which may contribute to ground water depletion.

Every landowner shall be entitled to a reasonable and beneficial use of the ground water underlying his or her land subject to the provisions of Chapter 46, article 6, and the Nebraska Ground Water Management and Protection Act and the correlative rights of other landowners when the ground water supply is insufficient to meet the reasonable needs of all users. The Legislature determines that the goal shall be to extend ground water reservoir life to the greatest extent practicable consistent with reasonable and beneficial use of the ground water and best management practices.

The Legislature further recognizes and declares that the management, protection, and conservation of ground water and the reasonable and beneficial use thereof are essential to the economic prosperity and future well-being of the state and that the public interest demands procedures for the implementation of management practices to conserve and protect ground water supplies and to prevent the contamination or inefficient or improper use thereof. The Legislature recognizes the need to provide for orderly management systems in areas where management of ground water is necessary to achieve locally and regionally determined ground water management objectives and where available data, evidence, or other information indicates that present or potential ground water conditions, including subirrigation conditions, require the designation of areas with special regulation of development and use.

The Legislature finds that given the impact of extended drought on areas of the state, the economic prosperity and future well-being of the state is advanced by providing economic assistance in the form of providing bonding authority for certain natural resources districts as defined in section 2-3226.01 and in the creation of the Water Resources Cash Fund to alleviate the adverse economic impact of regulatory decisions necessary for management, protection, and conservation of limited water resources. The Legislature specifically finds that, consistent with the public ownership of water held by the state for the benefit of its citizens, any action by the Legislature, or through authority conferred by it to any agency or political subdivision, to provide economic assistance does not establish any precedent that the Legislature in sections 2-3226.01 and 61-218 or in the future must or should purchase water or provide compensation for any economic impact resulting from regulation necessary pursuant to the terms of Laws 2007, LB 701.

Source: Laws 1975, LB 577, § 1; Laws 1981, LB 146, § 4; Laws 1982, LB 375, § 1; Laws 1983, LB 378, § 1; Laws 1984, LB 1071, § 1; Laws 1986, LB 894, § 20; Laws 1993, LB 3, § 7; R.S.1943, (1993), § 46-656; Laws 1996, LB 108, § 8; Laws 2003, LB 619, § 10; R.S.Supp.,2003, § 46-656.02; Laws 2004, LB 962, § 42; Laws 2007, LB701, § 21.
Effective date May 2, 2007.

46-705 Act; how construed. Nothing in the Nebraska Ground Water Management and Protection Act shall be construed to limit the powers of the Department of Health and Human Services provided in the Nebraska Safe Drinking Water Act.

Nothing in the Nebraska Ground Water Management and Protection Act relating to the contamination of ground water is intended to limit the powers of the Department of Environmental Quality provided in Chapter 81, article 15.

Source: Laws 1986, LB 894, § 19; R.S.1943, (1993), § 46-674.20; Laws 1996, LB 108, § 10; Laws 1996, LB 1044, § 261; R.S.1943, (1998), § 46-656.04; Laws 2004, LB 962, § 45; Laws 2007, LB296, § 203.
Operative date July 1, 2007.

Cross Reference

Nebraska Safe Drinking Water Act, see section 71-5313.

46-707 Natural resources district; powers; enumerated. (1) Regardless of whether or not any portion of a district has been designated as a management area, in order to administer and enforce the Nebraska Ground Water Management and Protection Act and to effectuate the policy of the state to conserve ground water resources, a district may:

(a) Adopt and promulgate rules and regulations necessary to discharge the administrative duties assigned in the act;

(b) Require such reports from ground water users as may be necessary;

(c) Require meters to be placed on any water wells for the purpose of acquiring water use data;

(d) Require decommissioning of water wells that are not properly classified as active status water wells as defined in section 46-1204.02 or inactive status water wells as defined in section 46-1207.02;

(e) Conduct investigations and cooperate or contract with agencies of the United States, agencies or political subdivisions of this state, public or private corporations, or any association or individual on any matter relevant to the administration of the act;

(f) Report to and consult with the Department of Environmental Quality on all matters concerning the entry of contamination or contaminating materials into ground water supplies; and

(g) Issue cease and desist orders, following ten days' notice to the person affected stating the contemplated action and in general the grounds for the action and following reasonable opportunity to be heard, to enforce any of the provisions of the act or of orders or permits issued pursuant to the act, to initiate suits to enforce the provisions of orders issued pursuant to the act, and to restrain the construction of illegal water wells or the withdrawal or use of water from illegal water wells.

Before any rule or regulation is adopted pursuant to this subsection, a public hearing shall be held within the district. Notice of the hearing shall be given as provided in section 46-743.

(2) In addition to the powers enumerated in subsection (1) of this section, a district may impose an immediate temporary stay for a period of one hundred eighty days on the construction of any new water well and on any increase in the number of acres historically irrigated, without prior notice or hearing, upon adoption of a resolution by the board finding that such temporary immediate stay is necessary. The district shall hold at least one public hearing on the matter within the district during such one hundred eighty days, with the notice of the hearing given as provided in section 46-743, prior to making a determination as to imposing a permanent stay or conditions in accordance with subsections (1) and (6) of section 46-739. Within forty-five days after a hearing pursuant to this subsection, the district shall decide whether to exempt from the immediate temporary stay the construction of water wells for which permits were issued prior to the date of the resolution commencing the stay but for which construction had not begun prior to such date. If construction of such water wells is allowed, all permits that were valid when the stay went into effect shall be extended by a time period equal to the length of the stay and such water wells shall otherwise be completed in accordance with section 46-738. Water wells listed in subsection (3) of section 46-714 and water wells of public water suppliers are exempt from this subsection.

Source: Laws 1975, LB 577, § 8; Laws 1979, LB 26, § 2; Laws 1982, LB 375, § 18; Laws 1984, LB 1071, § 6; Laws 1986, LB 894, § 24; Laws 1993, LB 3, § 10; Laws 1993, LB 131, § 29; Laws 1995, LB 871, § 6; R.S.Supp., 1995, § 46-663; Laws 1996, LB 108, § 14; R.S.1943, (1998), § 46-656.08; Laws 2004, LB 962, § 47; Laws 2007, LB701, § 22.
Effective date May 2, 2007.

46-715 River basin, subbasin, or reach; integrated management plan; considerations; contents; amendment; technical analysis; forecast of water available from streamflow. (1) Whenever the Department of Natural Resources has designated a river basin, subbasin, or reach as overappropriated or has made a final determination that a river basin, subbasin, or reach is fully appropriated, the natural resources districts encompassing such river basin, subbasin, or reach and the department shall jointly develop an integrated management plan for such river basin, subbasin, or reach. The plan shall

be completed, adopted, and take effect within three years after such designation or final determination unless the department and the natural resources districts jointly agree to an extension of not more than two additional years.

(2) In developing an integrated management plan, the effects of existing and potential new water uses on existing surface water appropriators and ground water users shall be considered. An integrated management plan shall include the following: (a) Clear goals and objectives with a purpose of sustaining a balance between water uses and water supplies so that the economic viability, social and environmental health, safety, and welfare of the river basin, subbasin, or reach can be achieved and maintained for both the near term and the long term; (b) a map clearly delineating the geographic area subject to the integrated management plan; (c) one or more of the ground water controls authorized for adoption by natural resources districts pursuant to section 46-739; (d) one or more of the surface water controls authorized for adoption by the department pursuant to section 46-716; and (e) a plan to gather and evaluate data, information, and methodologies that could be used to implement sections 46-715 to 46-717, increase understanding of the surface water and hydrologically connected ground water system, and test the validity of the conclusions and information upon which the integrated management plan is based. The plan may also provide for utilization of any applicable incentive programs authorized by law. Nothing in the integrated management plan for a fully appropriated river basin, subbasin, or reach shall require a natural resources district to regulate ground water uses in place at the time of the department's preliminary determination that the river basin, subbasin, or reach is fully appropriated, but a natural resources district may voluntarily adopt such regulations. The applicable natural resources district may decide to include all water users within the district boundary in an integrated management plan.

(3) The ground water and surface water controls proposed for adoption in the integrated management plan pursuant to subsection (1) of this section shall, when considered together and with any applicable incentive programs, (a) be consistent with the goals and objectives of the plan, (b) be sufficient to ensure that the state will remain in compliance with applicable state and federal laws and with any applicable interstate water compact or decree or other formal state contract or agreement pertaining to surface water or ground water use or supplies, and (c) protect the ground water users whose water wells are dependent on recharge from the river or stream involved and the surface water appropriators on such river or stream from streamflow depletion caused by surface water uses and ground water uses begun after the date the river basin, subbasin, or reach was designated as overappropriated or was preliminarily determined to be fully appropriated in accordance with section 46-713.

(4)(a) In any river basin, subbasin, or reach that is designated as overappropriated, when the designated area lies within two or more natural resources districts, the department and the affected natural resources districts shall jointly develop a basin-wide plan for the area designated as overappropriated. Such plan shall be developed using the consultation and collaboration process described in subdivision (b) of this subsection, shall be developed

concurrently with the development of the integrated management plan required pursuant to subsections (1) through (3) of this section, and shall be designed to achieve, in the incremental manner described in subdivision (d) of this subsection, the goals and objectives described in subsection (2) of this section. The basin-wide plan shall be adopted after hearings by the department and the affected natural resources districts.

(b) In any river basin, subbasin, or reach designated as overappropriated and subject to this subsection, the department and each natural resources district encompassing such river basin, subbasin, or reach shall jointly develop an integrated management plan for such river basin, subbasin, or reach pursuant to subsections (1) through (3) of this section. Each integrated management plan for a river basin, subbasin, or reach subject to this subsection shall be consistent with any basin-wide plan developed pursuant to subdivision (a) of this subsection. Such integrated management plan shall be developed after consultation and collaboration with irrigation districts, reclamation districts, public power and irrigation districts, mutual irrigation companies, canal companies, and municipalities that rely on water from within the affected area and that, after being notified of the commencement of the plan development process, indicate in writing their desire to participate in such process. In addition, the department or the affected natural resources districts may include designated representatives of other stakeholders. If agreement is reached by all parties involved in such consultation and collaboration process, the department and each natural resources district shall adopt the agreed-upon integrated management plan. If agreement cannot be reached by all parties involved, the integrated management plan shall be developed and adopted by the department and the affected natural resources district pursuant to sections 46-715 to 46-718 or by the Interrelated Water Review Board pursuant to section 46-719.

(c) Any integrated management plan developed under this subsection shall identify the overall difference between the current and fully appropriated levels of development. Such determination shall take into account cyclical supply, including drought, identify the portion of the overall difference between the current and fully appropriated levels of development that is due to conservation measures, and identify the portions of the overall difference between the current and fully appropriated levels of development that are due to water use initiated prior to July 1, 1997, and to water use initiated on or after such date.

(d) Any integrated management plan developed under this subsection shall adopt an incremental approach to achieve the goals and objectives identified under subdivision (2)(a) of this section using the following steps:

(i) The first incremental goals shall be to address the impact of streamflow depletions to (A) surface water appropriations and (B) water wells constructed in aquifers dependent upon recharge from streamflow, to the extent those depletions are due to water use initiated after July 1, 1997, and, unless an interstate cooperative agreement for such river basin, subbasin, or reach is no longer in effect, to prevent streamflow depletions that would cause noncompliance by Nebraska with such interstate cooperative agreement. During the first increment, the department and the affected natural resources districts shall also pursue voluntary efforts, subject to the availability of funds, to offset any increase in streamflow depletive effects that

occur after July 1, 1997, but are caused by ground water uses initiated prior to such date. The department and the affected natural resources districts may also use other appropriate and authorized measures for such purpose;

(ii) The department and the affected natural resources districts may amend an integrated management plan subject to this subsection (4) as necessary based on an annual review of the progress being made toward achieving the goals for that increment;

(iii) During the ten years following adoption of an integrated management plan developed under this subsection (4) or during the ten years after the adoption of any subsequent increment of the integrated management plan pursuant to subdivision (d)(iv) of this subsection, the department and the affected natural resources district shall conduct a technical analysis of the actions taken in such increment to determine the progress towards meeting the goals and objectives adopted pursuant to subsection (2) of this section. The analysis shall include an examination of (A) available supplies and changes in long-term availability, (B) the effects of conservation practices and natural causes, including, but not limited to, drought, and (C) the effects of the plan on reducing the overall difference between the current and fully appropriated levels of development identified in subdivision (4)(c) of this section. The analysis shall determine whether a subsequent increment is necessary in the integrated management plan to meet the goals and objectives adopted pursuant to subsection (2) of this section and reduce the overall difference between the current and fully appropriated levels of development identified in subdivision (4)(c) of this section;

(iv) Based on the determination made in subdivision (d)(iii) of this subsection, the department and the affected natural resources districts, utilizing the consultative and collaborative process described in subdivision (b) of this subsection, shall if necessary identify goals for a subsequent increment of the integrated management plan. Subsequent increments shall be completed, adopted, and take effect not more than ten years after adoption of the previous increment; and

(v) If necessary, the steps described in subdivisions (d)(ii) through (iv) of this subsection shall be repeated until the department and the affected natural resources districts agree that the goals and objectives identified pursuant to subsection (2) of this section have been met and the overall difference between the current and fully appropriated levels of development identified in subdivision (4)(c) of this section has been addressed so that the river basin, subbasin, or reach has returned to a fully appropriated condition.

(5) In any river basin, subbasin, or reach that is designated as fully appropriated or overappropriated and whenever necessary to ensure that the state is in compliance with an interstate compact or decree or a formal state contract or agreement, the department, in consultation with the affected districts, shall forecast on an annual basis the maximum amount of water that may be available from streamflow for beneficial use in the short term and long term in order to comply with the requirement of subdivision (3)(b) of this section. This forecast shall be made by January 1, 2008, and each January 1 thereafter.

Source: Laws 2004, LB 962, § 55; Laws 2006, LB 1226, § 25; Laws 2007, LB701, § 23.
Effective date May 2, 2007.

46-724 Contamination; not point source; Director of Environmental Quality; duties; hearing; notice. If the Director of Environmental Quality determines from the study conducted pursuant to section 46-722 that one or more sources of contamination are not point sources and if a management area, a purpose of which is protection of water quality, has been established which includes the affected area, the Director of Environmental Quality shall consider whether to require the district which established the management area to adopt an action plan as provided in sections 46-725 to 46-729.

If the Director of Environmental Quality determines that one or more of the sources are not point sources and if such a management area has not been established or does not include all the affected area, he or she shall, within thirty days after completion of the report required by section 46-722, consult with the district within whose boundaries the area affected by such contamination is located and fix a time and place for a public hearing to consider the report, hear any other evidence, and secure testimony on whether a management area should be designated or whether an existing area should be modified. The hearing shall be held within one hundred twenty days after completion of the report. Notice of the hearing shall be given as provided in section 46-743, and the hearing shall be conducted in accordance with such section.

At the hearing, all interested persons shall be allowed to appear and present testimony. The Conservation and Survey Division of the University of Nebraska, the Department of Health and Human Services, the Department of Natural Resources, and the appropriate district may offer as evidence any information in their possession which they deem relevant to the purpose of the hearing. After the hearing and after any studies or investigations conducted by or on behalf of the Director of Environmental Quality as he or she deems necessary, the director shall determine whether a management area shall be designated.

Source: Laws 1986, LB 894, § 5; Laws 1991, LB 51, § 9; Laws 1993, LB 3, § 18; R.S.1943, (1993), § 46-674.06; Laws 1996, LB 108, § 44; Laws 1996, LB 1044, § 260; Laws 2000, LB 900, § 201; R.S.Supp.,2002, § 46-656.38; Laws 2004, LB 962, § 64; Laws 2007, LB296, § 204.
Operative date July 1, 2007.

ARTICLE 10

RURAL WATER DISTRICT

Section.

46-1011. Plans and specifications; filing; approval; benefit units; water sale.

46-1018. Board; powers and duties; compensation; budget; audit; reports.

46-1011 Plans and specifications; filing; approval; benefit units; water sale. Plans and specifications for any proposed improvement authorized by sections 46-1001 to 46-1020 shall be filed with the director, the Department of Health and Human Services, and the secretary of the district. No construction of any such improvement shall begin until the

plans and specifications for such improvement have been approved by the director and the Department of Health and Human Services, except that if the improvement involves a public water system as defined in section 71-5301, only the Department of Health and Human Services shall be required to review the plans and specifications for such improvement and approve the same if in compliance with Chapter 71, article 53, and departmental regulations adopted thereunder.

The total benefits of any such improvement shall be divided into a suitable number of benefit units. Each landowner within the district shall subscribe to a number of such units in proportion to the extent he or she desires to participate in the benefits of the improvements. As long as the capacity of the district's facilities permits, participating members of the district may subscribe to additional units upon payment of a unit fee for each such unit. Owners of land located within the district who are not participating members may subscribe to such units as the board in its discretion may grant, and upon payment of the unit fee for each such unit shall be entitled to the same rights as original participating members. If the capacity of the district's facilities permits, the district may sell water to persons engaged in hauling water and to any political subdivision organized under the laws of the State of Nebraska.

Source: Laws 1967, c. 279, § 11, p. 752; Laws 1979, LB 546, § 2; Laws 1996, LB 1044, § 262; Laws 2000, LB 900, § 232; Laws 2001, LB 667, § 10; Laws 2007, LB296, § 205.
Operative date July 1, 2007.

46-1018 Board; powers and duties; compensation; budget; audit; reports. It shall be the duty of the chairperson of the board of directors to keep in repair such works as are constructed by the district as authorized in sections 46-1001 to 46-1020 and to operate such works, all as directed by the board. Such works shall be operated in conformance with the rules and regulations of the Department of Health and Human Services relating to water supply systems. The chairperson and all persons who may perform any service or labor as provided in sections 46-1001 to 46-1020 shall be paid such just and reasonable compensation as may be allowed by the board of directors, and such board shall annually prepare an estimated budget for the coming year, adjust water rates, if necessary to produce sufficient revenue required by such budget, cause an annual audit of the district's records and accounts to be made, and make a report on such matters at each annual meeting.

Source: Laws 1967, c. 279, § 18, p. 755; Laws 1996, LB 1044, § 263; Laws 2007, LB296, § 206.
Operative date July 1, 2007.

ARTICLE 12

WATER WELL STANDARDS AND CONTRACTORS' LICENSING

Section.

- 46-1201. Act, how cited.
- 46-1202. Purposes of act.
- 46-1203. Definitions, where found.

- 46-1204.01. Abandoned water well, defined.
- 46-1205. Board, defined.
- 46-1205.01. Licensed natural resources ground water technician, defined.
- 46-1207. Department, defined.
- 46-1207.01. Illegal water well, defined; landowner; petition for reclassification; when.
- 46-1209. Licensed pump installation contractor, defined.
- 46-1210. Licensed pump installation supervisor, defined.
- 46-1212. Water well, defined.
- 46-1213. Licensed water well contractor, defined.
- 46-1214. Licensed water well drilling supervisor, defined.
- 46-1214.01. Licensed water well monitoring technician, defined.
- 46-1217. Water Well Standards and Contractors' Licensing Board; created; members; qualifications.
- 46-1218. Board; terms; vacancy.
- 46-1219. Board; meetings; quorum.
- 46-1219.01. Repealed. Laws 2007, LB 463, § 1319.
- 46-1220. Repealed. Laws 2007, LB 463, § 1319.
- 46-1222. Repealed. Laws 2007, LB 463, § 1319.
- 46-1223. Examinations; requirements; fee; hardship licensing.
- 46-1223.01. Department; develop program.
- 46-1224. Board; set fees; Water Well Standards and Contractors' Licensing Fund; created; use; investment.
- 46-1225. License renewal; continuing competency required.
- 46-1226. Repealed. Laws 2007, LB 463, § 1319.
- 46-1227. Department; well and equipment standards; adopt rules and regulations.
- 46-1227.01. Activities subject to standards; contractor, supervisor, and technician authority; landowner rights.
- 46-1229. License required; application; qualifications.
- 46-1230. Licensees; proof of insurance.
- 46-1231. License; application; qualifications.
- 46-1232. Repealed. Laws 2007, LB 463, § 1319.
- 46-1233. Water well construction or decommissioning; equipment installation or repair; supervision required.
- 46-1233.01. Repealed. Laws 2007, LB 463, § 1319.
- 46-1235. License; disciplinary actions; grounds.
- 46-1235.01. Licensee or certificate holder; probation; conditions.
- 46-1235.02. Repealed. Laws 2007, LB 463, § 1319.
- 46-1236. Repealed. Laws 2007, LB 463, § 1319.
- 46-1237. Repealed. Laws 2007, LB 463, § 1319.
- 46-1237.01. License or certificate; temporary suspension or limitation.
- 46-1237.02. Proceedings under act; department; powers; orders authorized; appeal.
- 46-1237.03. Repealed. Laws 2007, LB 463, § 1319.
- 46-1238. License; when required; action to enjoin activities.

- 46-1239. Unauthorized employment; construction, decommissioning, or installation without license; criminal penalty; civil penalty.
- 46-1240. Failure to comply with standards; criminal penalty; civil penalty; action to enjoin.
- 46-1240.02. Repealed. Laws 2007, LB 463, § 1319.
- 46-1240.03. Repealed. Laws 2007, LB 463, § 1319.
- 46-1240.04. Repealed. Laws 2007, LB 463, § 1319.
- 46-1240.05. Violations; administrative order; emergency; hearing.
- 46-1241. Water well log required; contents.

46-1201 Act, how cited. Sections 46-1201 to 46-1241 shall be known and may be cited as the Water Well Standards and Contractors' Practice Act.

Source: Laws 1986, LB 310, § 1; Laws 1991, LB 51, § 18; Laws 1993, LB 131, § 38; Laws 1994, LB 981, § 9; Laws 1996, LB 1241, § 2; Laws 2001, LB 133, § 1; Laws 2007, LB463, § 1143.
Operative date December 1, 2008.

Cross Reference

Uniform Credentialing Act, see section 38-101.

46-1202 Purposes of act. The purposes of the Water Well Standards and Contractors' Practice Act are to: (1) Provide for the protection of ground water through the licensing and regulation of water well contractors, pump installation contractors, water well drilling supervisors, pump installation supervisors, water well monitoring technicians, and natural resources ground water technicians in the State of Nebraska; (2) protect the health and general welfare of the citizens of the state; (3) protect ground water resources from potential pollution by providing for proper siting and construction of water wells and proper decommissioning of water wells; and (4) provide data on potential water supplies through well logs which will promote the economic and efficient utilization and management of the water resources of the state.

Source: Laws 1986, LB 310, § 2; Laws 1994, LB 981, § 10; Laws 2001, LB 133, § 2; Laws 2001, LB 667, § 11; Laws 2007, LB463, § 1144.
Operative date December 1, 2008.

46-1203 Definitions, where found. For purposes of the Water Well Standards and Contractors' Practice Act, unless the context otherwise requires, the definitions found in sections 46-1204.01 to 46-1216 shall be used.

Source: Laws 1986, LB 310, § 3; Laws 1991, LB 51, § 19; Laws 1993, LB 131, § 39; Laws 1994, LB 981, § 11; Laws 1996, LB 1241, § 3; Laws 2001, LB 133, § 3; Laws 2007, LB463, § 1145.
Operative date December 1, 2008.

46-1204.01 Abandoned water well, defined. Abandoned water well means any water well (1) the use of which has been accomplished or permanently discontinued, (2) which has been decommissioned as described in the rules and regulations of the Department of Health and Human Services, and (3) for which the notice of abandonment required by subsection (2)

of section 46-602 has been filed with the Department of Natural Resources by the licensed water well contractor or licensed pump installation contractor who decommissioned the water well or by the water well owner if the owner decommissioned the water well.

Source: Laws 1994, LB 981, § 12; Laws 1996, LB 1044, § 264; Laws 2000, LB 900, § 234; Laws 2001, LB 667, § 12; Laws 2003, LB 245, § 7; Laws 2007, LB296, § 207; Laws 2007, LB463, § 1146.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 207, with LB 463, section 1146, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

46-1205 Board, defined. Board means the Water Well Standards and Contractors' Licensing Board.

Source: Laws 1986, LB 310, § 5; Laws 2007, LB463, § 1147.
Operative date December 1, 2008.

46-1205.01 Licensed natural resources ground water technician, defined. Licensed natural resources ground water technician means a natural resources ground water technician who has taken a training course, passed an examination based on the training course, and received a license from the department indicating that he or she is a licensed natural resources ground water technician.

Source: Laws 2001, LB 133, § 4; Laws 2007, LB463, § 1148.
Operative date December 1, 2008.

46-1207 Department, defined. Department shall mean the Department of Health and Human Services.

Source: Laws 1986, LB 310, § 7; Laws 1996, LB 1044, § 265; Laws 2007, LB296, § 208.
Operative date July 1, 2007.

46-1207.01 Illegal water well, defined; landowner; petition for reclassification; when. (1) Illegal water well means any water well which has not been properly decommissioned and which meets any of the following conditions:

- (a) The water well is in such a condition that it cannot be placed in active or inactive status;
- (b) Any necessary operating equipment has been removed and the well has not been placed in inactive status;
- (c) The water well is in such a state of disrepair that continued use for the purpose for which it was constructed is impractical;
- (d) The water well was constructed after October 1, 1986, but not constructed by a licensed water well contractor or by an individual on land owned by him or her and used by him or her for farming, ranching, or agricultural purposes or as his or her place of abode;
- (e) The water well poses a health or safety hazard;
- (f) The water well is an illegal water well in accordance with section 46-706; or

(g) The water well has been constructed after October 1, 1986, and such well is not in compliance with the standards developed under the Water Well Standards and Contractors' Practice Act.

(2) Whenever the department classifies a water well as an illegal water well, the landowner may petition the department to reclassify the water well as an active status water well, an inactive status water well, or an abandoned water well.

Source: Laws 1994, LB 981, § 15; Laws 1996, LB 108, § 76; Laws 2004, LB 962, § 98; Laws 2007, LB463, § 1149.
Operative date December 1, 2008.

46-1209 Licensed pump installation contractor, defined. Licensed pump installation contractor means an individual who has obtained a license from the department and who is a principal officer, director, manager, or owner-operator of any business engaged in the installation of pumps and pumping equipment or the decommissioning of water wells.

Source: Laws 1986, LB 310, § 9; Laws 2001, LB 667, § 13; Laws 2007, LB463, § 1150.
Operative date December 1, 2008.

46-1210 Licensed pump installation supervisor, defined. Licensed pump installation supervisor means any individual who has obtained a license from the department and who is engaged in the installation of pumps and pumping equipment or the decommissioning of water wells. Such supervisor may have discretionary and supervisory authority over other employees of a pump installation contractor.

Source: Laws 1986, LB 310, § 10; Laws 2001, LB 667, § 14; Laws 2007, LB463, § 1151.
Operative date December 1, 2008.

46-1212 Water well, defined. Water well shall mean any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for ground water, monitoring ground water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from or injecting fluid as defined in section 81-1502 into the underground water reservoir. Water well shall not include any excavation described in subdivisions (1)(b) and (1)(c) of section 46-601.01.

Source: Laws 1986, LB 310, § 12; Laws 1993, LB 131, § 41; Laws 2004, LB 962, § 100; Laws 2007, LB701, § 24.
Effective date May 2, 2007.

46-1213 Licensed water well contractor, defined. Licensed water well contractor means an individual who has obtained a license from the department and who is a principal officer, director, manager, or owner-operator of any business engaged in the construction or decommissioning of water wells.

Source: Laws 1986, LB 310, § 13; Laws 2001, LB 667, § 15; Laws 2007, LB463, § 1152.
Operative date December 1, 2008.

46-1214 Licensed water well drilling supervisor, defined. Licensed water well drilling supervisor means any individual who has obtained a license from the department and who is engaged in the construction or decommissioning of water wells. Such supervisor may have discretionary and supervisory authority over other employees of a water well contractor.

Source: Laws 1986, LB 310, § 14; Laws 2001, LB 667, § 16; Laws 2007, LB463, § 1153.
Operative date December 1, 2008.

46-1214.01 Licensed water well monitoring technician, defined. Licensed water well monitoring technician means any individual who has obtained a license from the department and who is engaged solely in the measuring of ground water levels, the collection of ground water samples from existing water wells, or the inspection of installed water well equipment or pumping systems. A licensed water well monitoring technician shall not supervise the work of others.

Source: Laws 1991, LB 51, § 20; Laws 2001, LB 133, § 6; Laws 2001, LB 667, § 17; Laws 2007, LB463, § 1154.
Operative date December 1, 2008.

46-1217 Water Well Standards and Contractors' Licensing Board; created; members; qualifications. (1) There is hereby created a Water Well Standards and Contractors' Licensing Board. The board shall be composed of ten members, six of whom shall be appointed by the Governor as follows: (a) A licensed water well contractor representing irrigation water well contractors, (b) a licensed water well contractor representing domestic water well contractors, (c) a licensed water well contractor representing municipal and industrial water well contractors, (d) a licensed pump installation contractor, (e) a manufacturer or supplier of water well or pumping equipment, and (f) a holder of a license issued under the Water Well Standards and Contractors' Practice Act employed by a natural resources district. The chief executive officer of the Department of Health and Human Services or his or her designated representative, the Director of Environmental Quality or his or her designated representative, the Director of Natural Resources or his or her designated representative, and the director of the Conservation and Survey Division of the University of Nebraska or his or her designated representative shall also serve as members of the board.

(2) Each member shall be a resident of the state. Each industry representative shall have had at least five years of experience in the business of his or her category prior to appointment and shall be actively engaged in such business at the time of appointment and while serving on the board. Each member representing a category subject to licensing under the Water Well Standards and Contractors' Practice Act shall be licensed by the department pursuant to such act. In making appointments, the Governor may consider recommendations made by the trade associations of each category.

Source: Laws 1986, LB 310, § 17; Laws 1993, LB 3, § 32; Laws 1993, LB 131, § 42; Laws 1996, LB 1044, § 266; Laws 2000, LB 900, § 235; Laws 2006, LB 508, § 5; Laws 2007, LB296, § 209; Laws 2007, LB463, § 1155.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Provisions regarding Water Well Standards and Contractors' Licensing Board, see sections 38-158 to 38-174.

46-1218 Board; terms; vacancy. (1) The terms of members of the board appointed pursuant to subdivisions (1)(e) and (f) of section 46-1217 shall be extended by one year to five-year terms, and the successors to members appointed pursuant to subdivisions (1)(a) through (f) of such section shall be appointed for five-year terms. No appointed member shall be appointed to serve more than two consecutive full five-year terms.

(2) Each appointed member shall hold office until the expiration of his or her term or until a successor has been appointed and qualified. Any vacancy occurring in the appointed board membership, other than by expiration of a term, shall be filled within sixty days by the Governor by appointment from the appropriate category for the unexpired term.

Source: Laws 1986, LB 310, § 18; Laws 2007, LB463, § 1156.
Operative date December 1, 2008.

46-1219 Board; meetings; quorum. (1) Special meetings of the board shall be called upon the written request of any three members of the board. The place of all meetings shall be at the offices of the department, unless otherwise determined by the board.

(2) A majority of the members of the board shall constitute a quorum for the transaction of business. Every act of a majority of the total number of members of the board shall be deemed to be an act of the board.

Source: Laws 1986, LB 310, § 19; Laws 2007, LB463, § 1157.
Operative date December 1, 2008.

46-1219.01 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

46-1220 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

46-1222 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

46-1223 Examinations; requirements; fee; hardship licensing. (1) Examinations for water well monitoring technicians shall be designed and adopted to examine the knowledge of the applicant regarding the minimum standards for water wells and water well pumps, the geological characteristics of the state, measuring ground water levels, and water sampling practices and techniques. Examinations for natural resources ground water technicians shall examine the knowledge of the applicant regarding inspection of chemigation systems, measuring and recording static water levels, inspecting and servicing flow meters, and water sampling practices and techniques. All other examinations shall be designed and

adopted to examine the knowledge of the applicant regarding the minimum standards for water wells and water well pumps, the geological characteristics of the state, current drilling or pump installation practices and techniques, and such other knowledge as deemed appropriate by the board.

(2) An examinee who fails to pass the initial examination may retake such examination without charge at any regularly scheduled examination held within twelve months after failing to pass the initial examination, except that when a national standardized examination is utilized which requires the payment of a fee to purchase such examination, the board shall require the applicant to pay the appropriate examination fee whether an initial examination or a retake of an examination is involved.

(3) In cases of hardship, the board may provide and direct that special arrangements for administering examinations be utilized. The board may also provide for temporary hardship licensing without examination due to the death of the current license holder or for other good cause shown.

Source: Laws 1986, LB 310, § 23; Laws 1991, LB 51, § 21; Laws 1993, LB 131, § 43; Laws 2001, LB 133, § 8; Laws 2007, LB463, § 1159.
Operative date December 1, 2008.

Cross Reference

For provisions regarding licensure under Uniform Credentialing Act, see section 38-101.

46-1223.01 Department; develop program. The department shall develop a program that is designed to train individuals to become licensed natural resources ground water technicians. Such course shall be developed by the department in consultation with the natural resources districts. Such course shall include inspection of chemigation systems, measuring and recording static water levels, inspecting and servicing flow meters, and taking water samples. Training sessions shall not be less than two hours and shall not exceed eight hours.

Source: Laws 2001, LB 133, § 7; Laws 2007, LB463, § 1160.
Operative date December 1, 2008.

46-1224 Board; set fees; Water Well Standards and Contractors' Licensing Fund; created; use; investment. (1) Except as otherwise provided in subsections (2) through (4) of this section, the board shall set reasonable fees in an amount calculated to recover the costs incurred by the department and the board in administering and carrying out the purposes of the Water Well Standards and Contractors' Practice Act. Such fees shall be paid to the department and remitted to the State Treasurer for credit to the Water Well Standards and Contractors' Licensing Fund, which fund is hereby created. Such fund shall be used by the department and the board for the purpose of administering the Water Well Standards and Contractors' Practice Act. Additionally, such fund shall be used to pay any required fee to a contractor which provides the on-line services for registration of water wells. Any discount in the amount paid the state by a credit card, charge card, or debit card company or a third-party merchant bank for such registration fees shall be deducted from the portion of the registration fee collected pursuant to this section. Any money in the fund available for investment shall

be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) Fees for credentialing individuals under the Water Well Standards and Contractors' Practice Act shall be established and collected as provided in sections 38-151 to 38-157.

(3) The board shall set a fee of not less than twenty-five dollars and not more than forty dollars for each water well which is required to be registered and which is designed and constructed to pump less than fifty gallons per minute and each monitoring and observation well and a fee of not less than forty dollars and not more than eighty dollars for each water well which is required to be registered and which is designed and constructed to pump fifty gallons per minute or more. For water wells permitted pursuant to the Industrial Ground Water Regulatory Act, the fee set pursuant to this subsection shall be collected for each of the first ten such water wells registered, and for each group of ten or fewer such water wells registered thereafter, the fee shall be collected as if only one water well was being registered. For a series of two or more water wells completed and pumped into a common carrier, as defined in section 46-601.01, as part of a single site plan for irrigation purposes, the fee set pursuant to this subsection shall be collected for each of the first two such water wells registered. For a series of water wells completed for purposes of installation of a ground heat exchanger for a structure for utilizing the geothermal properties of the ground, the fee set pursuant to this subsection shall be collected as if only one water well was being registered. For water wells constructed as part of a single site plan for monitoring ground water, obtaining hydrogeologic information, or extracting contaminants from the ground and for water wells constructed as part of remedial action approved by the Department of Environmental Quality pursuant to section 66-1525, 66-1529.02, or 81-15,124, the fee set pursuant to this subsection shall be collected for each of the first five such water wells registered, and for each group of five or fewer such water wells registered thereafter, the fee shall be collected as if only one water well was being registered. The fees shall be remitted to the Director of Natural Resources with the registration form required by section 46-602 and shall be in addition to the fee in section 46-606. The director shall remit the fee to the State Treasurer for credit to the Water Well Standards and Contractors' Licensing Fund.

(4) The board shall set an application fee for a declaratory ruling or variance of not less than fifty dollars and not more than one hundred dollars. The fee shall be remitted to the State Treasurer for credit to the Water Well Standards and Contractors' Licensing Fund.

Source: Laws 1986, LB 310, § 24; Laws 1993, LB 131, § 45; Laws 1994, LB 981, § 17; Laws 1994, LB 1066, § 34; Laws 1999, LB 92, § 4; Laws 2000, LB 900, § 236; Laws 2001, LB 667, § 18; Laws 2003, LB 242, § 8; Laws 2007, LB463, § 1161.
Operative date December 1, 2008.

Cross Reference

Industrial Ground Water Regulatory Act, see section 46-690.

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

46-1225 License renewal; continuing competency required. The board shall adopt rules and regulations to establish continuing competency requirements for persons licensed under the Water Well Standards and Contractors' Practice Act. Continuing education is sufficient to meet continuing competency requirements.

Source: Laws 1986, LB 310, § 25; Laws 1993, LB 131, § 46; Laws 1996, LB 1044, § 267; Laws 2002, LB 458, § 6; Laws 2002, LB 1021, § 2; Laws 2007, LB463, § 1162.
Operative date December 1, 2008.

Cross Reference

For provisions regarding continuing competency requirements under the Uniform Credentialing Act, see sections 38-145 and 38-146.

46-1226 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

46-1227 Department; well and equipment standards; adopt rules and regulations. The department, with the approval of the board, shall adopt and promulgate uniform rules and regulations, in accordance with the rules and regulations adopted and promulgated pursuant to sections 46-602 and 81-1505, for the establishment of standards for the (1) construction of water wells, (2) installation of pumps and pumping equipment, and (3) decommissioning water wells. Such rules, regulations, and standards may recognize differing hydrologic and geologic conditions, may recognize differing uses of any developed supplies, and shall be designed to promote efficient methods of operation and prevent water wells from becoming a source of contamination to the aquifer. Such standards shall be applicable whether such activities are carried out by a licensed water well contractor, a licensed pump installation contractor, a licensed water well drilling supervisor, a licensed pump installation supervisor, or any other person. Nothing in this section shall be construed to require that the department adopt, promulgate, or amend rules and regulations for programs in existence on October 1, 1986.

Source: Laws 1986, LB 310, § 27; Laws 1993, LB 3, § 33; Laws 1994, LB 981, § 18; Laws 2007, LB463, § 1163.
Operative date December 1, 2008.

Cross Reference

Old wells not in use, duty to fill, see sections 54-311 and 54-315.

46-1227.01 Activities subject to standards; contractor, supervisor, and technician authority; landowner rights. (1) All water well construction and monitoring, pump and pumping equipment installation and repair, and decommissioning shall be accomplished following the standards developed under the Water Well Standards and Contractors' Practice Act.

(2) A licensed water well contractor may have supervisory authority over all employees.

(3) A licensed water well drilling supervisor shall work under the supervision of a licensed water well contractor and may have supervisory authority over noncredentialed employees.

(4) A licensed pump installation contractor may have supervisory authority over all employees.

(5) A licensed pump installation supervisor shall work under the supervision of a licensed pump installation contractor and may have supervisory authority over noncredentialed employees.

(6) A licensed water well monitoring technician may work independently and shall not have supervisory authority.

(7) A licensed natural resources ground water technician employed by a natural resources district may work independently and shall not have supervisory authority over any credentialed or noncredentialed persons.

(8) An individual who owns land and uses it for farming, ranching, or agricultural purposes or as his or her place of abode may, on such land, construct a water well, install a pump in a well, or decommission a driven sandpoint well.

Source: Laws 2007, LB463, § 1158.
Operative date December 1, 2008.

46-1229 License required; application; qualifications. Any person desiring to engage in the construction of water wells, the installation of pumps and pumping equipment, or the decommissioning of water wells shall make initial application for a license to the department in accordance with section 38-130. A license to engage in the construction or decommissioning of water wells or the installation of pumps and pumping equipment shall be issued to every applicant who demonstrates professional competence by successfully passing the examination prescribed in section 46-1223 and otherwise complies with the Uniform Credentialing Act, the Water Well Standards and Contractors' Practice Act, and all standards, rules, and regulations adopted and promulgated pursuant to such acts. Applicants shall receive licenses for any category or combination of categories for which they have successfully passed the required examination.

Source: Laws 1986, LB 310, § 29; Laws 1997, LB 752, § 122; Laws 2001, LB 667, § 19; Laws 2003, LB 242, § 9; Laws 2007, LB463, § 1164.
Operative date December 1, 2008.

Cross Reference

Uniform Credentialing Act, see section 38-101.

46-1230 Licensees; proof of insurance. Each applicant for an initial license as a licensed water well contractor or as a licensed pump installation contractor shall furnish proof to the department that there is in force a policy of public liability and property damage insurance issued to the applicant in an amount established by the department by rules and regulations sufficient to protect the public interest. Proof of insurance shall be maintained and submitted annually for the term of the active license.

Source: Laws 1986, LB 310, § 30; Laws 2007, LB463, § 1165.
Operative date December 1, 2008.

46-1231 License; application; qualifications. Each water well drilling supervisor, pump installation supervisor, natural resources ground water technician, and water well monitoring technician shall make application for a license in his or her respective trade. A license shall be issued to every applicant who successfully passes the examination for such license and otherwise complies with the Uniform Credentialing Act, the Water Well Standards and Contractors' Practice Act, and all standards, rules, and regulations adopted and promulgated pursuant to such acts. Any individual employed by a licensed water well contractor or a licensed pump installation contractor who is not deemed to qualify as a licensed water well drilling supervisor or licensed pump installation supervisor may apply for a license in his or her respective trade in the same manner as the licensed water well drilling supervisor or the licensed pump installation supervisor. A supervisor holding a certificate of competence in his or her respective trade on December 1, 2008, shall be deemed to be licensed as a supervisor in such trade on such date. A technician holding a certificate of competence in his or her respective trade on December 1, 2008, shall be deemed to be licensed as a technician in such trade on such date.

Source: Laws 1986, LB 310, § 31; Laws 1991, LB 51, § 22; Laws 1997, LB 752, § 123; Laws 2001, LB 133, § 9; Laws 2003, LB 242, § 10; Laws 2007, LB463, § 1166.
Operative date December 1, 2008.

Cross Reference

Uniform Credentialing Act, see section 38-101.

46-1232 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

46-1233 Water well construction or decommissioning; equipment installation or repair; supervision required. (1) Any person constructing a water well, installing or repairing pumps onsite, or decommissioning a water well shall do such work in accordance with the rules and regulations developed under the Water Well Standards and Contractors' Practice Act.

(2) A water well shall be constructed, pumps and pumping equipment shall be installed and repaired onsite, and water wells shall be decommissioned by a licensed contractor or supervisor or a person working directly under the supervision of a licensed contractor or supervisor, except that an individual may construct a water well or install and repair pumps and pumping equipment onsite on land owned by him or her and used by him or her for farming, ranching, or agricultural purposes or as his or her place of abode. No water well shall be opened or the seal broken by any person other than an owner of the water well unless (a) the opening or breaking of the seal is carried out by a licensed water well monitoring technician or a licensed natural resources ground water technician, (b) the opening or breaking of the seal is carried out by a licensed operator of a public water system in the course of his or her employment or someone under his or her supervision, or (c) a state electrical inspector in the course of his or her employment.

(3) For purposes of this section, supervision means the ready availability of the person licensed pursuant to the Water Well Standards and Contractors' Practice Act for consultation and direction of the activities of any person not licensed who assists in the construction of a water well, the installation of pumps and pumping equipment, or decommissioning of a water well. Contact with the licensed contractor or supervisor by telecommunication shall be sufficient to show ready availability.

Source: Laws 1986, LB 310, § 33; Laws 1996, LB 1241, § 5; Laws 2001, LB 667, § 20; Laws 2007, LB463, § 1167.
Operative date December 1, 2008.

46-1233.01 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

46-1235 License; disciplinary actions; grounds. In cases other than those relating to failure to meet the requirements for an initial license, the department may deny, refuse renewal of, suspend, or revoke licenses or may take other disciplinary action in accordance with section 38-196 for the grounds found in sections 38-178 and 38-179 and for any of the following acts or offenses:

(1) Violation of the Water Well Standards and Contractors' Practice Act or any standards, rules, or regulations adopted and promulgated pursuant to such act;

(2) Conduct or practices detrimental to the health or safety of persons hiring the services of the licensee or of members of the general public;

(3) Practice of the trade while the license to do so is suspended or practice of the trade in contravention of any limitation placed upon the license;

(4) Failing to file a water well registration required by subsection (1), (2), (3), (4), or (5) of section 46-602 or failing to file a notice required by subsection (7) of such section; or

(5) Failing to file a properly completed notice of abandonment of a water well required by subsection (8) of section 46-602.

Source: Laws 1986, LB 310, § 35; Laws 1993, LB 131, § 47; Laws 1996, LB 1044, § 268; Laws 2001, LB 667, § 21; Laws 2003, LB 245, § 8; Laws 2007, LB296, § 210; Laws 2007, LB463, § 1168.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

46-1235.01 Licensee or certificate holder; probation; conditions. The authority of the department to discipline a licensee or certificate holder by placing him or her on probation pursuant to sections 46-1235 and 46-1237.02 shall include, but not be limited to, the following:

(1) To require the licensee or certificate holder to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral, or both, and may be a practical or technical examination, or both, or any or all of such combinations of written, oral, practical, and technical at the option of the department; or

(2) To restrict or limit the extent, scope, or type of practice of the licensee or certificate holder upon consultation with the board.

Source: Laws 1993, LB 131, § 48; Laws 1996, LB 1044, § 269; Laws 2007, LB296, § 211; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

46-1235.02 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

46-1236 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

46-1237 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

46-1237.01 License or certificate; temporary suspension or limitation. The department may temporarily suspend or limit a license or certificate without notice or hearing if the department determines that there is reasonable cause to believe that grounds exist under section 46-1235 for the revocation, suspension, or limitation of the license or certificate and that the licensee's or certificate holder's continuation in practice would constitute an imminent danger to public health and safety. Simultaneously with any such action, the department shall institute proceedings for a hearing on the grounds for revocation, suspension, or limitation. Such hearing shall be held no later than fifteen days from the date of such temporary suspension or limitation. A continuance of the hearing shall be granted by the department upon written request of the licensee or certificate holder, and such a continuance shall not exceed thirty days. An order of temporary suspension or limitation shall take effect when served in person upon the licensee or certificate holder. A temporary suspension or limitation shall not be in effect for a period in excess of one hundred eighty days. At the end of such one-hundred-eighty-day period, the license or certificate shall be reinstated unless the department has revoked, suspended, or limited the license or certificate after notice and hearing.

Source: Laws 1993, LB 131, § 52; Laws 1996, LB 1044, § 270; Laws 2007, LB296, § 212; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

46-1237.02 Proceedings under act; department; powers; orders authorized; appeal. (1) All proceedings under the Water Well Standards and Contractors' Licensing Act shall be summary in nature and triable as equity actions. Affidavits may be received in evidence at the discretion of the department. The department may administer oaths, subpoena witnesses and compel their attendance, and issue subpoenas duces tecum and require the

production of books, accounts, and documents in the same manner and to the same extent as a district court. Depositions may be used by either party.

(2) Upon the completion of any hearing, the department may enter an order to exercise any or all of the following powers irrespective of the petition:

(a) Issue a censure or reprimand against the licensee or certificate holder;

(b) Suspend judgment;

(c) Place the licensee or certificate holder on probation;

(d) Place a limitation on the license or certificate and upon the right of the licensee or certificate holder to practice the trade to such extent, scope, or type of practice, for such time, and under such conditions as are found necessary and proper. The department shall consult with the board in all instances prior to issuing an order of limitation;

(e) Impose a civil penalty under section 46-1240. The amount of the penalty shall be based on the severity of the violation;

(f) Enter an order of suspension;

(g) Enter an order of revocation; or

(h) Dismiss the action.

(3) If a licensee or certificate holder fails to appear, either in person or by counsel, at the time and place designated in a notice, the department, after receiving satisfactory evidence of the truth of the charges, shall order the license or certificate revoked or suspended or shall order any other appropriate disciplinary action.

(4) Any order issued under the act may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1993, LB 131, § 53; Laws 1996, LB 1044, § 271; Laws 2007, LB296, § 213.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

Cross Reference

Administrative Procedure Act, see section 84-920.

46-1237.03 Repealed. Laws 2007, LB 463, § 1319.

Operative date December 1, 2008.

46-1238 License; when required; action to enjoin activities. Any person who fails to employ or use at least one individual appropriately licensed and available or any person who engages, without a license for such activities, in the construction of water wells, the installation of pumps and pumping equipment, the decommissioning of water wells, or the measuring of ground water levels, the collection of ground water samples from existing water wells, or the inspection of installed water well equipment, pumping systems, or chemigation regulation devices, in addition to the other penalties provided in the Uniform Credentialing Act or the Water Well Standards and Contractors' Practice Act, may be enjoined from continuing such activities.

Source: Laws 1986, LB 310, § 38; Laws 1991, LB 51, § 24; Laws 1996, LB 1241, § 6; Laws 2001, LB 667, § 22; Laws 2006, LB 508, § 7; Laws 2007, LB463, § 1169.
Operative date December 1, 2008.

Cross Reference

Uniform Credentialing Act, see section 38-101.

46-1239 Unauthorized employment; construction, decommissioning, or installation without license; criminal penalty; civil penalty. Any person who fails to employ or use at least one individual appropriately licensed and available or any person who engages, without a license for such activities, in the construction of water wells, the installation of pumps and pumping equipment, or the decommissioning of water wells is guilty of a Class II misdemeanor or subject to a civil penalty of not more than one thousand dollars for each day the violation occurs.

Any civil penalty assessed and unpaid shall constitute a debt to the state which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. An action to collect a civil penalty shall be brought within two years of the alleged violation providing the basis of the penalty, except that if the cause of action is not discovered and could not be reasonably discovered within the two-year period, the action may be commenced within two years after the date of discovery or after the date of discovery of facts which would reasonably lead to discovery, whichever is earlier. The department shall remit the civil penalty to the State Treasurer, within thirty days after receipt, for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1986, LB 310, § 39; Laws 1996, LB 1241, § 7; Laws 1997, LB 30, § 5; Laws 2001, LB 667, § 23; Laws 2006, LB 508, § 8; Laws 2007, LB463, § 1170.
Operative date December 1, 2008.

46-1240 Failure to comply with standards; criminal penalty; civil penalty; action to enjoin. Any person who engages in or any person who employs or uses a person who engages in the construction of water wells, the installation of pumps and pumping equipment, the decommissioning of water wells, or the measuring of ground water levels, the collection of ground water samples from existing water wells, or the inspection of installed water well equipment, pumping systems, or chemigation regulation devices or who fails to decommission or decommissions an illegal water well without complying with the standards adopted and promulgated pursuant to the Water Well Standards and Contractors' Practice Act shall be guilty of a Class III misdemeanor or subject to a civil penalty of not more than five hundred dollars for each day an intentional violation occurs and may be enjoined from continuing such activity, including a mandatory injunction.

Any civil penalty assessed and unpaid shall constitute a debt to the state which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. An action to collect a civil penalty shall be brought within two years of

the alleged violation providing the basis of the penalty, except that if the cause of action is not discovered and could not be reasonably discovered within the two-year period, the action may be commenced within two years after the date of discovery or after the date of discovery of facts which would reasonably lead to discovery, whichever is earlier. The department shall remit the civil penalty to the State Treasurer, within thirty days after receipt, for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1986, LB 310, § 40; Laws 1991, LB 51, § 25; Laws 1993, LB 131, § 55; Laws 1994, LB 981, § 20; Laws 1996, LB 1241, § 8; Laws 1997, LB 30, § 6; Laws 2001, LB 667, § 24; Laws 2007, LB463, § 1171.
Operative date December 1, 2008.

46-1240.02 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

46-1240.03 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

46-1240.04 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

46-1240.05 Violations; administrative order; emergency; hearing. (1) Whenever the department has reason to believe that a violation of any provision of the Water Well Standards and Contractors' Licensing Act or any rule or regulation adopted and promulgated by the department is occurring or has occurred, the department may cause an administrative order to be served upon the person alleged to be in violation. Such order shall specify the violation and the facts alleged to constitute a violation and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any such order shall become final unless the person named in the order requests in writing a hearing before the department no later than thirty days after the date such order is served. In lieu of such order, the department may require that the person appear before the department at a time and place specified in the notice and answer the charges. The notice shall be served on the person not less than thirty days before the time set for the hearing.

(2) Whenever the department finds that an emergency exists requiring immediate action to protect the public health and welfare concerning a chemical, material, procedure, or act which is determined by the department to be harmful or potentially harmful to human health, the department may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as the department deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such order is directed shall comply immediately and, on written application to the department, shall be afforded a hearing as soon as possible and not later than ten days after receipt of such application by such affected person. On the basis of such hearing, the department shall continue such order in effect, revoke it, or modify it.

(3) The department shall afford to the alleged violator an opportunity for a hearing before the department.

Source: Laws 1993, LB 131, § 60; Laws 1996, LB 1044, § 272; Laws 2007, LB296, § 214; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

46-1241 Water well log required; contents. Any owner of a water well or a licensed water well contractor who engages in an act of or the business of constructing a water well shall keep and maintain an accurate well log of the construction of each such water well. The well log shall be available to the department for inspection and copying during reasonable hours or the regular business hours of the contractor.

The well log shall include the following information:

- (1) Legal description of the water well;
- (2) Description and depth of geologic materials encountered;
- (3) Depth and diameter or dimension of constructed water well and test hole;
- (4) Depth and diameter or dimension of excavated hole if applicable;
- (5) Depth of formation stabilizer or gravel pack and size of particles if used;
- (6) Depth and thickness of grout or other sealing material if applicable;
- (7) Casing information, including length, inside diameter, wall thickness, and type of material if applicable;
- (8) Screen information, including length, trade name, inside and outside diameter, slot size, and type of material if applicable;
- (9) Static water level;
- (10) Water level when pumped at the designated rate, giving the rate of pumping and amount of time pumped, if applicable;
- (11) Yield of water well in gallons per minute or gallons per hour if applicable;
- (12) Signature of water well contractor;
- (13) Dates drilling commenced and construction completed;
- (14) Intended use of the water well;
- (15) Name and address of the owner;
- (16) Identification number of any permit for the water well issued pursuant to Chapter 46, article 6, Chapter 66, article 11, or any other law;
- (17) Name, address, and license number of any license issued pursuant to the Water Well Standards and Contractors' Practice Act of any person, other than the owner of the water well, who constructed the water well; and
- (18) Other data as the board reasonably requires.

Source: Laws 1986, LB 310, § 41; Laws 1993, LB 131, § 62; Laws 2001, LB 667, § 25; Laws 2007, LB463, § 1172.
Operative date December 1, 2008.

CHAPTER 47

JAILS AND CORRECTIONAL FACILITIES

Article.

6. Community Corrections. 47-623 to 47-639.

ARTICLE 6

COMMUNITY CORRECTIONS

Section.

- 47-623. Council; members; terms; expenses.
 47-632. Community Corrections Uniform Data Analysis Cash Fund; created; use; investment.
 47-633. Fees.
 47-635. Act, how cited.
 47-636. Legislative findings.
 47-637. Study of probation and parole service delivery; legislative findings.
 47-638. Community Corrections Council; contract to conduct study; completion; submission.
 47-639. Study; funding.

47-623 Council; members; terms; expenses. (1) The council shall include the following voting members:

- (a) The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice;
- (b) The Director of Correctional Services;
- (c) The chairperson of the Board of Parole;
- (d) The Parole Administrator; and
- (e) Nine members appointed by the Governor with the approval of a majority of the Legislature, consisting of: One representative from a list of persons nominated by the Nebraska Criminal Defense Attorneys Association; one representative from a list of persons nominated by the Nebraska County Attorneys Association; one full-time officer or employee of a law enforcement agency; one mental health and substance abuse professional; from each congressional district, one provider of community-based behavioral health services; and two at-large members.

(2) The council shall include the following nonvoting members:

- (a) The State Court Administrator;
- (b) The probation administrator;
- (c) Two members of the Legislature, appointed by the Executive Board of the Legislative Council;
- (d) Two judges of the district court, appointed by the Chief Justice of the Supreme Court; and

(e) The chief executive officer of the Department of Health and Human Services or his or her designee.

(3) The terms of office for members initially appointed under subdivision (1)(e) of this section shall be three years. Upon completion of the initial terms of such members, the Governor shall appoint (a) a representative from law enforcement, a mental health and substance abuse professional, and one at-large member for terms of one year, (b) a representative of the Nebraska Criminal Defense Attorneys Association, one provider of community-based behavioral health services from the first congressional district, one provider of community-based behavioral health services from the third congressional district, and one at-large member for terms of two years, and (c) a representative of the Nebraska County Attorneys Association and a provider of community-based behavioral health services from the second congressional district for terms of three years. Succeeding appointees shall be appointed for terms of three years. An appointee to a vacancy occurring from an unexpired term shall serve out the term of his or her predecessor. Members whose terms have expired shall continue to serve until their successors have been appointed and qualified.

(4) The council shall by majority vote elect a chairperson from among the members of the council.

(5) The members of the council shall be reimbursed for their actual and necessary expenses incurred while engaged in the performance of their official duties as provided in sections 81-1174 to 81-1177.

Source: Laws 2003, LB 46, § 35; Laws 2005, LB 538, § 14; Laws 2006, LB 1113, § 46; Laws 2007, LB296, § 215.
Operative date July 1, 2007.

47-632 Community Corrections Uniform Data Analysis Cash Fund; created; use; investment. The Community Corrections Uniform Data Analysis Cash Fund is created. The fund shall be established for administrative purposes only within the Nebraska Commission on Law Enforcement and Criminal Justice and shall be administered by the executive director of the Community Corrections Council. The fund shall consist of money collected pursuant to section 47-633. The fund shall only be used to support operations costs and analysis relating to the implementation and coordination of the uniform analysis of crime data pursuant to the Community Corrections Act, including associated information technology projects, as specifically approved by the executive director of the Community Corrections Council. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2003, LB 46, § 44; Laws 2005, LB 426, § 11; Laws 2005, LB 538, § 19; Laws 2007, LB322, § 6.
Operative date July 1, 2007.

Cross Reference

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

47-633 Fees. In addition to all other court costs assessed according to law, a uniform data analysis fee of one dollar shall be taxed as costs for each case filed in each county court, separate juvenile court, and district court, including appeals to such courts, and for each appeal and original action filed in the Court of Appeals and the Supreme Court. The fees shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the end of each month. The State Treasurer shall credit the fees to the Community Corrections Uniform Data Analysis Cash Fund.

Source: Laws 2003, LB 46, § 45; Laws 2007, LB322, § 7.
 Operative date July 1, 2007.

47-635 Act, how cited. Sections 47-635 to 47-639 shall be known and may be cited as the Probation and Parole Services Study Act.

Source: Laws 2007, LB540, § 1.
 Effective date May 31, 2007.

47-636 Legislative findings. The Legislature finds that an indepth analysis of the state's adult and juvenile probation systems and services and the parole system and services is needed to assess the efficacy of coordination of such services and administration of the systems for the benefit of the public and the offenders served by the systems.

Source: Laws 2007, LB540, § 2.
 Effective date May 31, 2007.

47-637 Study of probation and parole service delivery; legislative findings. The Legislature finds that:

- (1) Nebraska's probation and parole services function administratively under different branches of state government. Probation services are currently under the judicial branch while parole is a function of the Department of Correctional Services in the executive branch;
- (2) Probation and parole offender-based services share many characteristics relative to: Community supervision of offenders; risk assessment; enforcement of probation and parole terms and conditions; offender accountability; initiation of filings relating to probation and parole violations; providing offender assistance; and appropriate referral for community-based services, including, but not limited to, substance abuse and mental health evaluation and treatment, housing assistance, and workforce development;
- (3) Laws 1971, LB 680, which statutorily established probation service delivery in the judicial branch, provided the authority for parole officers to supervise probationers;
- (4) Laws 2003, LB 46, provided for the establishment of community-based programs, services, and facilities for both probationers and parolees. Access to and participation in program services and facilities are shared by probationers and parolees. Probation officers and parole officers are assigned supervision of probationers and parolees that concurrently access and participate in community-based programs and services; and

(5) It is appropriate for the Legislature to commission a study of the effectiveness, efficiency, and responsiveness of Nebraska's current administrative assignment of probation and parole service delivery.

Source: Laws 2007, LB540, § 3.
Effective date May 31, 2007.

47-638 Community Corrections Council; contract to conduct study; completion; submission. (1) The Community Corrections Council shall contract with an organization with expertise in the field of corrections policy and administration to conduct a study of Nebraska's probation and parole service delivery system. The study shall:

(a) Identify areas of overlap in offender services provided by probation and parole administration and assess the potential for coordination of state-sponsored services and resources which assist in offender rehabilitation;

(b) Assess the optimum methods for delivery of a seamless continuum of offender services within the current probation and parole systems and analyze whether a single system would be to the advantage of state government and offenders;

(c) Undertake a comparative analysis of other states' probation and parole administrative systems to include, but not be limited to, issues relating to personnel salary and benefits structures, hiring standards, officer caseloads, and officer training curriculum; and

(d) Assess service needs of juveniles on probation, their access to services, and the appropriate minimum array of services to be available for juveniles on probation throughout the state.

(2) The study shall be completed on or before December 31, 2007, and a copy of the completed study shall be submitted to the Chief Justice, the Governor, and the Speaker of the Legislature.

Source: Laws 2007, LB540, § 4.
Effective date May 31, 2007.

47-639 Study; funding. The Legislature shall appropriate funds to the Community Corrections Council for purposes of conducting the study required by section 47-638.

Source: Laws 2007, LB540, § 5.
Effective date May 31, 2007.

CHAPTER 48

LABOR

Article.

1. Workers' Compensation.
 - Part II - Elective Compensation.
 - (c) Schedule of Compensation. 48-120 to 48-125.02.
 - (e) Settlement and Payment of Compensation. 48-144.03, 48-146.01.
 - Part IV - Nebraska Workers' Compensation Court. 48-162.02.
 - Part VI - Name of Act. 48-1,110.
2. General Provisions. 48-237.
4. Health and Safety Regulations. 48-418 to 48-446.
6. Employment Security. 48-601 to 48-664.
7. Boiler Inspection. 48-720 to 48-736.
8. Commission of Industrial Relations. 48-801 to 48-838.
10. Age Discrimination. 48-1001 to 48-1010.
12. Wages.
 - (a) Minimum Wages. 48-1203, 48-1203.01.
 - (c) Wage Payment and Collection. 48-1228 to 48-1232.
18. Nebraska Amusement Ride Act. 48-1809, 48-1810.
19. Drug and Alcohol Testing. 48-1902.
23. New Hire Reporting Act. 48-2305 to 48-2307.
25. Conveyance Safety Act. 48-2501 to 48-2512.01.

ARTICLE 1

WORKERS' COMPENSATION

Part II - ELECTIVE COMPENSATION

(c) Schedule of Compensation

Section.

- 48-120. Medical, surgical, and hospital services; employer's liability; fee schedule; physician, right to select; procedures; powers and duties; court; powers; dispute resolution procedure; managed care plan.
- 48-120.04. Diagnostic Related Group inpatient hospital fee schedule; established; applicability; adjustments; methodology; hospital; duties; reports; compensation court; powers and duties.
- 48-121. Compensation; schedule; total, partial, and temporary disability; injury to specific parts of the body; amounts and duration of payments.
- 48-125.02. State employee claim; Prompt Payment Act applicable; other claims; processing of claim; requirements; failure to pay; effect; presumption of payment.
- (e) Settlement and Payment of Compensation
- 48-144.03. Workers' compensation insurance policy; notice of cancellation or nonrenewal; effective date.

48-146.01. Transferred to section 44-3,158.

Part IV - NEBRASKA WORKERS' COMPENSATION COURT

48-162.02. Workers' Compensation Trust Fund; created; use; contributions; Attorney General; Department of Administrative Services; duties.

Part VI - NAME OF ACT

48-1,110. Act, how cited.

Part II - ELECTIVE COMPENSATION

(c) SCHEDULE OF COMPENSATION

48-120 Medical, surgical, and hospital services; employer's liability; fee schedule; physician, right to select; procedures; powers and duties; court; powers; dispute resolution procedure; managed care plan. (1)(a) The employer is liable for all reasonable medical, surgical, and hospital services, including plastic surgery or reconstructive surgery but not cosmetic surgery when the injury has caused disfigurement, appliances, supplies, prosthetic devices, and medicines as and when needed, which are required by the nature of the injury and which will relieve pain or promote and hasten the employee's restoration to health and employment, and includes damage to or destruction of artificial members, dental appliances, teeth, hearing aids, and eyeglasses, but, in the case of dental appliances, hearing aids, or eyeglasses, only if such damage or destruction resulted from an accident which also caused personal injury entitling the employee to compensation therefor for disability or treatment, subject to the approval of and regulation by the Nebraska Workers' Compensation Court, not to exceed the regular charge made for such service in similar cases.

(b) Except as provided in section 48-120.04, the compensation court shall establish schedules of fees for such services. The compensation court shall review such schedules at least biennially and adopt appropriate changes when necessary. The compensation court may contract with any person, firm, corporation, organization, or government agency to secure adequate data to establish such fees. The compensation court shall publish and furnish to the public the fee schedules established pursuant to this subdivision and section 48-120.04. The compensation court may establish and charge a fee to recover the cost of published fee schedules.

(c) Reimbursement for inpatient hospital services provided by hospitals located in or within fifteen miles of a Nebraska city of the metropolitan class or primary class and by other hospitals with fifty-one or more licensed beds shall be according to the Diagnostic Related Group inpatient hospital fee schedule established in section 48-120.04.

(d) A workers' compensation insurer, risk management pool, self-insured employer, or managed care plan certified pursuant to section 48-120.02 may contract with a provider or provider network for medical, surgical, or hospital services. Such contract may establish fees for services different than the fee schedules established under subdivision (1)(b) of this section

or established under section 48-120.04. Such contract shall be in writing and mutually agreed upon prior to the date services are provided.

(e) The provider or supplier of such services shall not collect or attempt to collect from any employer, insurer, government, or injured employee or dependent or the estate of any injured or deceased employee any amount in excess of (i) the fee established by the compensation court for any such service, (ii) the fee established under section 48-120.04, or (iii) the fee contracted under subdivision (1)(d) of this section.

(2)(a) The employee has the right to select a physician who has maintained the employee's medical records prior to an injury and has a documented history of treatment with the employee prior to an injury or a physician who has maintained the medical records of an immediate family member of the employee prior to an injury and has a documented history of treatment with an immediate family member of the employee prior to an injury. For purposes of this subsection, immediate family member means the employee's spouse, children, parents, stepchildren, and stepparents. The employer shall notify the employee following an injury of such right of selection in a form and manner and within a timeframe established by the compensation court. If the employer fails to notify the employee of such right of selection or fails to notify the employee of such right of selection in a form and manner and within a timeframe established by the compensation court, then the employee has the right to select a physician. If the employee fails to exercise such right of selection in a form and manner and within a timeframe established by the compensation court following notice by the employer pursuant to this subsection, then the employer has the right to select the physician. If selection of the initial physician is made by the employee or employer pursuant to this subsection following notice by the employer pursuant to this subsection, the employee or employer shall not change the initial selection of physician made pursuant to this subsection unless such change is agreed to by the employee and employer or is ordered by the compensation court pursuant to subsection (6) of this section. If compensability is denied by the workers' compensation insurer, risk management pool, or self-insured employer, (i) the employee has the right to select a physician and shall not be made to enter a managed care plan and (ii) the employer is liable for medical, surgical, and hospital services subsequently found to be compensable. If the employer has exercised the right to select a physician pursuant to this subsection and if the compensation court subsequently orders reasonable medical services previously refused to be furnished to the employee by the physician selected by the employer, the compensation court shall allow the employee to select another physician to furnish further medical services. If the employee selects a physician located in a community not the home or place of work of the employee and a physician is available in the local community or in a closer community, no travel expenses shall be required to be paid by the employer or his or her workers' compensation insurer.

(b) In cases of injury requiring dismemberment or injuries involving major surgical operation, the employee may designate to his or her employer the physician or surgeon to perform the operation.

(c) If the injured employee unreasonably refuses or neglects to avail himself or herself of medical or surgical treatment furnished by the employer, except as herein and otherwise provided, the employer is not liable for an aggravation of such injury due to such refusal and neglect and the compensation court or judge thereof may suspend, reduce, or limit the compensation otherwise payable under the Nebraska Workers' Compensation Act.

(d) If, due to the nature of the injury or its occurrence away from the employer's place of business, the employee or the employer is unable to select a physician using the procedures provided by this subsection, the selection requirements of this subsection shall not apply as long as the inability to make a selection persists.

(e) The physician selected may arrange for any consultation, referral, or extraordinary or other specialized medical services as the nature of the injury requires.

(f) The employer is not responsible for medical services furnished or ordered by any physician or other person selected by the employee in disregard of this section. Except as otherwise provided by the Nebraska Workers' Compensation Act, the employer is not liable for medical, surgical, or hospital services or medicines if the employee refuses to allow them to be furnished by the employer.

(3) No claim for such medical treatment is valid and enforceable unless, within fourteen days following the first treatment, the physician giving such treatment furnishes the employer a report of such injury and treatment on a form prescribed by the compensation court. The compensation court may excuse the failure to furnish such report within fourteen days when it finds it to be in the interest of justice to do so.

(4) All physicians and other providers of medical services attending injured employees shall comply with all the rules and regulations adopted and promulgated by the compensation court and shall make such reports as may be required by it at any time and at such times as required by it upon the condition or treatment of any injured employee or upon any other matters concerning cases in which they are employed. All medical and hospital information relevant to the particular injury shall, on demand, be made available to the employer, the employee, the workers' compensation insurer, and the compensation court. The party requesting such medical and hospital information shall pay the cost thereof. No such relevant information developed in connection with treatment or examination for which compensation is sought shall be considered a privileged communication for purposes of a workers' compensation claim. When a physician or other provider of medical services willfully fails to make any report required of him or her under this section, the compensation court may order the forfeiture of his or her right to all or part of payment due for services rendered in connection with the particular case.

(5) Whenever the compensation court deems it necessary, in order to assist it in resolving any issue of medical fact or opinion, it shall cause the employee to be examined by a physician or physicians selected by the compensation court and obtain from such physician or physicians a report upon the condition or matter which is the subject of inquiry. The compensation court may charge the cost of such examination to the workers' compensation insurer. The cost of

such examination shall include the payment to the employee of all necessary and reasonable expenses incident to such examination, such as transportation and loss of wages.

(6) The compensation court shall have the authority to determine the necessity, character, and sufficiency of any medical services furnished or to be furnished and shall have authority to order a change of physician, hospital, rehabilitation facility, or other medical services when it deems such change is desirable or necessary. Any dispute regarding medical, surgical, or hospital services furnished or to be furnished under this section may be submitted by the parties, the supplier of such service, or the compensation court on its own motion for informal dispute resolution by a staff member of the compensation court or an outside mediator pursuant to section 48-168. In addition, any party or the compensation court on its own motion may submit such a dispute for a medical finding by an independent medical examiner pursuant to section 48-134.01. Issues submitted for informal dispute resolution or for a medical finding by an independent medical examiner may include, but are not limited to, the reasonableness and necessity of any medical treatment previously provided or to be provided to the injured employee. The compensation court may adopt and promulgate rules and regulations regarding informal dispute resolution or the submission of disputes to an independent medical examiner that are considered necessary to effectuate the purposes of this section.

(7) For the purpose of this section, physician has the same meaning as in section 48-151.

(8) The compensation court shall order the employer to make payment directly to the supplier of any services provided for in this section or reimbursement to anyone who has made any payment to the supplier for services provided in this section. No such supplier or payor may be made or become a party to any action before the compensation court.

(9) Notwithstanding any other provision of this section, a workers' compensation insurer, risk management pool, or self-insured employer may contract for medical, surgical, hospital, and rehabilitation services to be provided through a managed care plan certified pursuant to section 48-120.02. Once liability for medical, surgical, and hospital services has been accepted or determined, the employer may require that employees subject to the contract receive medical, surgical, and hospital services in the manner prescribed in the contract, except that an employee may receive services from a physician selected by the employee pursuant to subsection (2) of this section if the physician so selected agrees to refer the employee to the managed care plan for any other treatment that the employee may require and if the physician so selected agrees to comply with all the rules, terms, and conditions of the managed care plan. If compensability is denied by the workers' compensation insurer, risk management pool, or self-insured employer, the employee may leave the managed care plan and the employer is liable for medical, surgical, and hospital services previously provided. The workers' compensation insurer, risk management pool, or self-insured employer shall give notice to employees subject to the contract of eligible service providers and such other information regarding the contract and manner of receiving medical, surgical, and hospital services under the managed care plan as the compensation court may prescribe.

Source: Laws 1913, c. 198, § 20, p. 585; R.S.1913, § 3661; Laws 1917, c. 85, § 6, p. 202; Laws 1919, c. 91, § 1, p. 228; Laws 1921, c. 122, § 1, p. 520; C.S.1922, § 3043; C.S.1929, § 48-120; Laws 1935, c. 57, § 19, p. 197; C.S.Supp.,1941, § 48-120; R.S.1943, § 48-120; Laws 1965, c. 278, § 1, p. 799; Laws 1969, c. 388, § 2, p. 1359; Laws 1969, c. 392, § 1, p. 1376; Laws 1975, LB 127, § 1; Laws 1978, LB 529, § 2; Laws 1979, LB 215, § 1; Laws 1986, LB 811, § 38; Laws 1987, LB 187, § 1; Laws 1992, LB 360, § 13; Laws 1993, LB 757, § 2; Laws 1998, LB 1010, § 2; Laws 1999, LB 216, § 3; Laws 2005, LB 238, § 3; Laws 2007, LB588, § 1.
Operative date September 1, 2007.

48-120.04 Diagnostic Related Group inpatient hospital fee schedule; established; applicability; adjustments; methodology; hospital; duties; reports; compensation court; powers and duties. (1) This section applies only to hospitals identified in subdivision (1)(c) of section 48-120.

(2) For inpatient discharges on or after January 1, 2008, the Diagnostic Related Group inpatient hospital fee schedule shall be as set forth in this section, except as otherwise provided in subdivision (1)(d) of section 48-120. Adjustments shall be made annually as provided in this section, with such adjustments to become effective each January 1.

(3) For purposes of this section:

(a) Current Medicare Factor is derived from the Diagnostic Related Group Prospective Payment System as established by the Centers for Medicare and Medicaid Services under the United States Department of Health and Human Services and means the summation of the following components:

(i) Hospital-specific Federal Standardized Amount, including all wage index adjustments and reclassifications;

(ii) Hospital-specific Capital Standard Federal Rate, including geographic, outlier, and exception adjustment factors;

(iii) Hospital-specific Indirect Medical Education Rate, reflecting a percentage add-on for indirect medical education costs and related capital; and

(iv) Hospital-specific Disproportionate Share Hospital Rate, reflecting a percentage add-on for disproportionate share of low income patient costs and related capital;

(b) Current Medicare Weight means the weight assigned to each Medicare Diagnostic Related Group as established by the Centers for Medicare and Medicaid Services under the United States Department of Health and Human Services;

(c) Diagnostic Related Group means the Diagnostic Related Group assigned to inpatient hospital services using the public domain classification and methodology system developed for the Centers for Medicare and Medicaid Services under the United States Department of Health and Human Services; and

(d) Workers' Compensation Factor means the Current Medicare Factor for each hospital multiplied by one hundred fifty percent.

(4) The Diagnostic Related Group inpatient hospital fee schedule shall include at least thirty-eight of the most frequently utilized Medicare Diagnostic Related Groups for workers' compensation with the goal that the fee schedule covers at least ninety percent of all workers'

compensation inpatient hospital claims submitted by hospitals identified in subdivision (1)(c) of section 48-120. Rehabilitation Diagnostic Related Groups shall not be included in the Diagnostic Related Group inpatient hospital fee schedule. Claims for inpatient trauma services shall not be reimbursed under the Diagnostic Related Group inpatient hospital fee schedule established under this section until January 1, 2010. Claims for inpatient trauma services prior to January 1, 2010, shall be reimbursed under the fees established by the compensation court pursuant to subdivision (1)(b) of section 48-120 or as contracted pursuant to subdivision (1)(d) of such section. For purposes of this subsection, trauma means a major single-system or multisystem injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability.

(5) The Diagnostic Related Group inpatient hospital fee schedule shall be established by the following methodology:

(a) The Diagnostic Related Group reimbursement amount required under the Nebraska Workers' Compensation Act shall be equal to the Current Medicare Weight multiplied by the Workers' Compensation Factor for each hospital;

(b) The Stop-Loss Threshold amount shall be the Diagnostic Related Group reimbursement amount calculated in subdivision (5)(a) of this section multiplied by two and one-half;

(c) For charges over the Stop-Loss Threshold amount of the schedule, the hospital shall be reimbursed the Diagnostic Related Group reimbursement amount calculated in subdivision (5)(a) of this section plus sixty percent of the charges over the Stop-Loss Threshold amount; and

(d) For charges less than the Stop-Loss Threshold amount of the schedule, the hospital shall be reimbursed the lower of the hospital's billed charges or the Diagnostic Related Group reimbursement amount calculated in subdivision (5)(a) of this section.

(6) For charges for all other stays or services that are not on the Diagnostic Related Group inpatient hospital fee schedule or are not contracted for under subdivision (1)(d) of section 48-120, the hospital shall be reimbursed under the schedule of fees established by the compensation court pursuant to subdivision (1)(b) of section 48-120.

(7) Each hospital shall assign and include a Diagnostic Related Group on each workers' compensation claim submitted. The workers' compensation insurer, risk management pool, or self-insured employer may audit the Diagnostic Related Group assignment of the hospital.

(8) The chief executive officer of each hospital shall sign and file with the administrator of the compensation court by October 15 of each year, in the form and manner prescribed by the administrator, a sworn statement disclosing the Current Medicare Factor of the hospital in effect on October 1 of such year and each item and amount making up such factor.

(9) Each hospital, workers' compensation insurer, risk management pool, and self-insured employer shall report to the administrator of the compensation court by October 15 of each year, in the form and manner prescribed by the administrator, the total number of claims submitted for each Diagnostic Related Group and the number of times billed charges exceeded the Stop-Loss Threshold amount for each Diagnostic Related Group.

(10) The compensation court may add or subtract Diagnostic Related Groups in striving to achieve the goal of including those Diagnostic Related Groups that encompass at least ninety percent of the inpatient hospital workers' compensation claims submitted by hospitals identified in subdivision (1)(c) of section 48-120. The administrator of the compensation court shall annually make necessary adjustments to comply with the Current Medicare Weights and shall annually adjust the Current Medicare Factor for each hospital based on the annual statement submitted pursuant to subsection (8) of this section.

Source: Laws 2007, LB588, § 2.
Operative date September 1, 2007.

48-121 Compensation; schedule; total, partial, and temporary disability; injury to specific parts of the body; amounts and duration of payments. The following schedule of compensation is hereby established for injuries resulting in disability:

(1) For total disability, the compensation during such disability shall be sixty-six and two-thirds percent of the wages received at the time of injury, but such compensation shall not be more than the maximum weekly income benefit specified in section 48-121.01 nor less than the minimum weekly income benefit specified in section 48-121.01, except that if at the time of injury the employee receives wages of less than the minimum weekly income benefit specified in section 48-121.01, then he or she shall receive the full amount of such wages per week as compensation. Nothing in this subdivision shall require payment of compensation after disability shall cease;

(2) For disability partial in character, except the particular cases mentioned in subdivision (3) of this section, the compensation shall be sixty-six and two-thirds percent of the difference between the wages received at the time of the injury and the earning power of the employee thereafter, but such compensation shall not be more than the maximum weekly income benefit specified in section 48-121.01. This compensation shall be paid during the period of such partial disability but not beyond three hundred weeks. Should total disability be followed by partial disability, the period of three hundred weeks mentioned in this subdivision shall be reduced by the number of weeks during which compensation was paid for such total disability;

(3) For disability resulting from permanent injury of the classes listed in this subdivision, the compensation shall be in addition to the amount paid for temporary disability, except that the compensation for temporary disability shall cease as soon as the extent of the permanent disability is ascertainable. For disability resulting from permanent injury of the following classes, compensation shall be: For the loss of a thumb, sixty-six and two-thirds percent of daily wages during sixty weeks. For the loss of a first finger, commonly called the index finger, sixty-six and two-thirds percent of daily wages during thirty-five weeks. For the loss of a second finger, sixty-six and two-thirds percent of daily wages during thirty weeks. For the loss of a third finger, sixty-six and two-thirds percent of daily wages during twenty weeks. For the loss of a fourth finger, commonly called the little finger, sixty-six and two-thirds percent of daily wages during fifteen weeks. The loss of the first phalange of the thumb

or of any finger shall be considered to be equal to the loss of one-half of such thumb or finger and compensation shall be for one-half of the periods of time above specified, and the compensation for the loss of one-half of the first phalange shall be for one-fourth of the periods of time above specified. The loss of more than one phalange shall be considered as the loss of the entire finger or thumb, except that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand. For the loss of a great toe, sixty-six and two-thirds percent of daily wages during thirty weeks. For the loss of one of the toes other than the great toe, sixty-six and two-thirds percent of daily wages during ten weeks. The loss of the first phalange of any toe shall be considered equal to the loss of one-half of such toe, and compensation shall be for one-half of the periods of time above specified. The loss of more than one phalange shall be considered as the loss of the entire toe. For the loss of a hand, sixty-six and two-thirds percent of daily wages during one hundred seventy-five weeks. For the loss of an arm, sixty-six and two-thirds percent of daily wages during two hundred twenty-five weeks. For the loss of a foot, sixty-six and two-thirds percent of daily wages during one hundred fifty weeks. For the loss of a leg, sixty-six and two-thirds percent of daily wages during two hundred fifteen weeks. For the loss of an eye, sixty-six and two-thirds percent of daily wages during one hundred twenty-five weeks. For the loss of an ear, sixty-six and two-thirds percent of daily wages during twenty-five weeks. For the loss of hearing in one ear, sixty-six and two-thirds percent of daily wages during fifty weeks. For the loss of the nose, sixty-six and two-thirds percent of daily wages during fifty weeks.

In any case in which there is a loss or loss of use of more than one member or parts of more than one member set forth in this subdivision, but not amounting to total and permanent disability, compensation benefits shall be paid for the loss or loss of use of each such member or part thereof, with the periods of benefits to run consecutively. The total loss or permanent total loss of use of both hands, or both arms, or both feet, or both legs, or both eyes, or hearing in both ears, or of any two thereof, in one accident, shall constitute total and permanent disability and be compensated for according to subdivision (1) of this section. In all other cases involving a loss or loss of use of both hands, both arms, both feet, both legs, both eyes, or hearing in both ears, or of any two thereof, total and permanent disability shall be determined in accordance with the facts. Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand, and amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot. Amputation at or above the elbow shall be considered as the loss of an arm, and amputation at or above the knee shall be considered as the loss of a leg. Permanent total loss of the use of a finger, hand, arm, foot, leg, or eye shall be considered as the equivalent of the loss of such finger, hand, arm, foot, leg, or eye. In all cases involving a permanent partial loss of the use or function of any of the members mentioned in this subdivision, the compensation shall bear such relation to the amounts named in such subdivision as the disabilities bear to those produced by the injuries named therein.

If, in the compensation court's discretion, compensation benefits payable for a loss or loss of use of more than one member or parts of more than one member set forth in this subdivision, resulting from the same accident or illness, do not adequately compensate the employee for

such loss or loss of use and such loss or loss of use results in at least a thirty percent loss of earning capacity, the compensation court shall, upon request of the employee, determine the employee's loss of earning capacity consistent with the process for such determination under subdivision (1) or (2) of this section, and in such a case the employee shall not be entitled to compensation under this subdivision.

If the employer and the employee are unable to agree upon the amount of compensation to be paid in cases not covered by the schedule, the amount of compensation shall be settled according to sections 48-173 to 48-185. Compensation under this subdivision shall not be more than the maximum weekly income benefit specified in section 48-121.01 nor less than the minimum weekly income benefit specified in section 48-121.01, except that if at the time of the injury the employee received wages of less than the minimum weekly income benefit specified in section 48-121.01, then he or she shall receive the full amount of such wages per week as compensation;

(4) For disability resulting from permanent disability, if immediately prior to the accident the rate of wages was fixed by the day or hour, or by the output of the employee, the weekly wages shall be taken to be computed upon the basis of a workweek of a minimum of five days, if the wages are paid by the day, or upon the basis of a workweek of a minimum of forty hours, if the wages are paid by the hour, or upon the basis of a workweek of a minimum of five days or forty hours, whichever results in the higher weekly wage, if the wages are based on the output of the employee; and

(5) The employee shall be entitled to compensation from his or her employer for temporary disability while undergoing physical or medical rehabilitation and while undergoing vocational rehabilitation whether such vocational rehabilitation is voluntarily offered by the employer and accepted by the employee or is ordered by the Nebraska Workers' Compensation Court or any judge of the compensation court.

Source: Laws 1913, c. 198, § 21, p. 586; R.S.1913, § 3662; Laws 1917, c. 85, § 7, p. 202; Laws 1919, c. 91, § 2, p. 228; Laws 1921, c. 122, § 1, p. 521; C.S.1922, § 3044; C.S.1929, § 48-121; Laws 1935, c. 57, § 41, p. 210; C.S.Supp.,1941, § 48-121; R.S.1943, § 48-121; Laws 1945, c. 112, § 1, p. 357; Laws 1949, c. 160, § 1, p. 403; Laws 1951, c. 152, § 1, p. 617; Laws 1953, c. 162, § 1, p. 506; Laws 1955, c. 186, § 1, p. 527; Laws 1957, c. 203, § 1, p. 710; Laws 1957, c. 204, § 1, p. 716; Laws 1959, c. 223, § 1, p. 784; Laws 1963, c. 284, § 1, p. 847; Laws 1963, c. 285, § 1, p. 854; Laws 1965, c. 279, § 1, p. 800; Laws 1967, c. 288, § 1, p. 783; Laws 1969, c. 388, § 3, p. 1360; Laws 1969, c. 393, § 1, p. 1378; Laws 1971, LB 320, § 1; Laws 1973, LB 193, § 1; Laws 1974, LB 807, § 1; Laws 1974, LB 808, § 1; Laws 1974, LB 710, § 1; Laws 1975, LB 198, § 1; Laws 1977, LB 275, § 1; Laws 1978, LB 446, § 1; Laws 1979, LB 114, § 1; Laws 1979, LB 358, § 1; Laws 1983, LB 158, § 1; Laws 1985, LB 608, § 1; Laws 1993, LB 757, § 4; Laws 1999, LB 216, § 5; Laws 2007, LB588, § 4.
Operative date January 1, 2008.

48-125.02 State employee claim; Prompt Payment Act applicable; other claims; processing of claim; requirements; failure to pay; effect; presumption of payment. (1) Regarding payment of a claim for medical, surgical, or hospital services for a state employee under the Nebraska Workers' Compensation Act, the Prompt Payment Act applies.

(2) For claims other than claims under subsection (1) of this section regarding payment of a claim for medical, surgical, or hospital services for an employee under the Nebraska Workers' Compensation Act:

(a) The workers' compensation insurer, risk management pool, or self-insured employer shall notify the provider within fifteen business days after receiving a claim as to what information is necessary to process the claim. Failure to notify the provider assumes the workers' compensation insurer, risk management pool, or self-insured employer has all information necessary to pay the claim. The workers' compensation insurer, risk management pool, or self-insured employer shall pay providers in accordance with sections 48-120 and 48-120.04 within thirty business days after receipt of all information necessary to process the claim. Failure to pay the provider within the thirty days will cause the workers' compensation insurer, risk management pool, or self-insured employer to reimburse the provider's billed charges instead of the scheduled or contracted fees;

(b) If a claim is submitted electronically, the claim is presumed to have been received on the date of the electronic verification of receipt by the workers' compensation insurer, risk management pool, or self-insured employer or its clearinghouse. If a claim is submitted by mail, the claim is presumed to have been received five business days after the claim has been placed in the United States mail with first-class postage prepaid. The presumption may be rebutted by sufficient evidence that the claim was received on another day or not received at all; and

(c) Payment of a claim by the workers' compensation insurer, risk management pool, or self-insured employer means the receipt of funds by the provider. If payment is submitted electronically, the payment is presumed to have been received on the date of the electronic verification of receipt by the provider or the provider's clearinghouse. If payment is submitted by mail, the payment is presumed to have been received five business days after the payment has been placed in the United States mail with first-class postage prepaid. The presumption may be rebutted by sufficient evidence that the payment was received on another day or not received at all.

Source: Laws 2007, LB588, § 3.
Operative date January 1, 2008.

Cross Reference

Prompt Payment Act, see section 81-2401.

(e) SETTLEMENT AND PAYMENT OF COMPENSATION

48-144.03 Workers' compensation insurance policy; notice of cancellation or nonrenewal; effective date. (1) Notwithstanding policy provisions that stipulate a workers' compensation insurance policy to be a contract with a fixed term of coverage that expires at the end of the term, coverage under a workers' compensation insurance policy shall continue in full force and effect until notice is given in accordance with this section.

(2) No cancellation of a workers' compensation insurance policy within the policy period shall be effective unless notice of the cancellation is given by the workers' compensation

insurer to the Nebraska Workers' Compensation Court and to the employer. No such cancellation shall be effective until thirty days after the giving of such notices, except that the cancellation may be effective ten days after the giving of such notices if such cancellation is based on (a) notice from the employer to the insurer to cancel the policy, (b) nonpayment of premium due the insurer under any policy written by the insurer for the employer, (c) failure of the employer to reimburse deductible losses as required under any policy written by the insurer for the employer, or (d) failure of the employer, if covered pursuant to section 44-3,158, to comply with sections 48-443 to 48-445.

(3) No workers' compensation insurance policy shall expire or lapse at the end of the policy period unless notice of nonrenewal is given by the workers' compensation insurer to the compensation court and to the employer. No workers' compensation insurance policy shall expire or lapse until thirty days after the giving of such notices, except that a policy may expire or lapse ten days after the giving of such notices if the nonrenewal is based on (a) notice from the employer to the insurer to not renew the policy, (b) nonpayment of premium due the insurer under any policy written by the insurer for the employer, (c) failure of the employer to reimburse deductible losses as required under any policy written by the insurer for the employer, or (d) failure of the employer, if covered pursuant to section 44-3,158, to comply with sections 48-443 to 48-445.

(4) Notwithstanding other provisions of this section, if the employer has secured workers' compensation insurance coverage with another workers' compensation insurer, then the cancellation or nonrenewal shall be effective as of the effective date of such other insurance coverage.

(5) The notices required by this section shall state the reason for the cancellation or nonrenewal of the policy.

(6) The notices required by this section shall be provided in writing and shall be deemed given upon the mailing of such notices by certified mail, except that notices from insurers to the compensation court may be provided by electronic means if such electronic means is approved by the administrator of the compensation court. If notice is provided by electronic means pursuant to such an approval, it shall be deemed given upon receipt by the compensation court.

Source: Laws 1971, LB 572, § 13; Laws 1972, LB 1269, § 1; Laws 1986, LB 811, § 65; Laws 1994, LB 978, § 49; Laws 1994, LB 1222, § 61; Laws 1996, LB 1230, § 1; Laws 2005, LB 13, § 7; Laws 2005, LB 238, § 8; Laws 2007, LB117, § 33.
Effective date September 1, 2007.

48-146.01 Transferred to section 44-3,158.

Part IV - NEBRASKA WORKERS' COMPENSATION COURT

48-162.02 Workers' Compensation Trust Fund; created; use; contributions; Attorney General; Department of Administrative Services; duties. (1) The Workers'

Compensation Trust Fund is created. The fund shall be administered by the administrator of the Nebraska Workers' Compensation Court.

(2) The Workers' Compensation Trust Fund shall be used to make payments in accordance with sections 48-128 and 48-162.01. Payments from the fund shall be made in the same manner as for claims against the state. The State Treasurer shall be the custodian of the fund and all money and securities in the fund shall be held in trust by the State Treasurer and shall not be money or property of the state. The fund shall be raised and derived as follows: Every insurance company which is transacting business in this state shall on or before March 1 of each year pay to the Director of Insurance an amount equal to two percent of the workers' compensation benefits paid by it during the preceding calendar year in this state. Every risk management pool providing workers' compensation group self-insurance coverage to any of its members shall on or before March 1 of each year pay to the Director of Insurance an amount equal to two percent of the workers' compensation benefits paid by it during the preceding calendar year in this state but in no event less than twenty-five dollars.

(3) The computation of the amounts as provided in subsection (2) of this section shall be made on forms furnished by the Department of Insurance and shall be forwarded to the department together with a sworn statement by an appropriate fiscal officer of the company attesting the accuracy of the computation. The department shall furnish such forms to the companies and pools prior to the end of the year for which the amounts are payable together with any information deemed necessary or appropriate by the department. Upon receipt of the payment, the director shall audit and examine the computations to determine that the proper amount has been paid.

(4) The Director of Insurance, after notice and hearing in accordance with the Administrative Procedure Act, may rescind or refuse to reissue the certificate of authority of any company or pool which fails to remit the amount due.

(5) The Director of Insurance shall remit the amounts paid to the State Treasurer for credit to the Workers' Compensation Trust Fund promptly upon completion of the audit and examination and in no event later than May 1 of the year in which the amounts have been received, except that (a) when there is a dispute as to the amount payable, the proceeds shall be credited to a suspense account until disposition of the controversy and (b) one percent of the amount received shall be credited to the Department of Insurance to cover the costs of administration.

(6) Every employer in the occupations described in section 48-106 who qualifies as a self-insurer and who is issued a permit to self-insure shall remit to the State Treasurer for credit to the Workers' Compensation Trust Fund an annual amount equal to two percent of the workers' compensation benefits paid by it during the preceding calendar year in this state but in no event less than twenty-five dollars.

(7) The amounts required to be paid by the insurance companies, risk management pools, and self-insurers under subsections (2) and (6) of this section shall be in addition to any other amounts, either in taxes, assessments, or otherwise, as required under any other law of this state.

(8) The administrator of the compensation court shall be charged with the conservation of the assets of the Workers' Compensation Trust Fund. The administrator may order payments from the fund for vocational rehabilitation services and costs pursuant to section 48-162.01 when (a) vocational rehabilitation is voluntarily offered by the employer and accepted by the employee, (b) the employee is engaged in an approved vocational rehabilitation plan pursuant to section 48-162.01, and (c) the employer has agreed to pay weekly compensation benefits for temporary disability while the employee is engaged in such plan.

(9) The Attorney General shall represent the fund when requested by the administrator in proceedings brought by or against the fund pursuant to section 48-162.01. The Attorney General shall represent the fund in all proceedings brought by or against the fund pursuant to section 48-128. When a claim is made by or against the fund pursuant to section 48-128, the State of Nebraska shall be impleaded as a party plaintiff or defendant, as the case may require, and when so impleaded as a defendant, service shall be had upon the Attorney General.

(10) The Department of Administrative Services shall furnish monthly to the Nebraska Workers' Compensation Court a statement of the Workers' Compensation Trust Fund setting forth the balance of the fund as of the first day of the preceding month, the income and its sources, the payments from the fund in itemized form, and the balance of the fund on hand as of the last day of the preceding month. The State Treasurer may receive and credit to the fund any sum or sums which may at any time be contributed to the state or the fund by the United States of America or any agency thereof to which the state may be or become entitled under any act of Congress or otherwise by reason of any payment made from the fund.

(11) When the fund equals or exceeds two million three hundred thousand dollars, no further contributions thereto shall be required by employers, risk management pools, or insurance companies. Thereafter whenever the amount of the fund is reduced below one million two hundred thousand dollars by reason of payments made pursuant to this section or otherwise or whenever the administrator of the compensation court determines that payments likely to be made from the fund in the next succeeding year will probably cause the fund to be reduced below one million two hundred thousand dollars, the administrator shall notify all self-insurers and the Director of Insurance, who shall notify all workers' compensation insurance companies and risk management pools, that such contributions are to be resumed as of the date set in such notice and such contributions shall continue as provided in this section after the effective date of such notice. Such contributions shall continue until the fund again equals two million three hundred thousand dollars.

(12) Any expenses necessarily incurred by the Workers' Compensation Trust Fund or by the Attorney General in connection with a proceeding brought by or against the fund may be paid out of the fund. Such expenses may be taxed as costs and recovered by the fund in any case in which the fund prevails.

Source: Laws 1974, LB 808, § 3; Laws 1986, LB 811, § 95; Laws 1987, LB 398, § 46; Laws 1988, LB 1034, § 2; Laws 1992, LB 1006, § 95; Laws 1993, LB 757, § 18; Laws 2000, LB 1221, § 12; Laws 2004, LB 1091, § 4; Laws 2005, LB 13, § 20; Laws 2007, LB322, § 8.
Operative date July 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

Risk management pool, defined, see section 44-4303.

Part VI - NAME OF ACT

48-1,110 Act, how cited. Sections 48-101 to 48-1,117 shall be known and may be cited as the Nebraska Workers' Compensation Act.

Source: Laws 1986, LB 811, § 136; Laws 1986, LB 1036, § 2; Laws 1990, LB 313, § 4; Laws 1992, LB 360, § 26; Laws 1993, LB 757, § 30; Laws 1997, LB 128, § 7; Laws 1997, LB 474, § 7; Laws 2005, LB 13, § 32; Laws 2007, LB588, § 5.
Operative date September 1, 2007.

ARTICLE 2

GENERAL PROVISIONS

Section.

48-237. Employer; prohibited use of social security numbers; exceptions; violations; penalty; conviction; how treated.

48-237 Employer; prohibited use of social security numbers; exceptions; violations; penalty; conviction; how treated. (1) For purposes of this section:

(a) Employer means a person which employs any individual within this state as an employee;

(b) Employee means any individual permitted to work by an employer pursuant to an employment relationship or who has contracted to sell the goods of an employer and to be compensated by commission. Services performed by an individual for an employer shall be deemed to be employment, unless it is shown that (i) such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact, (ii) such service is either outside the usual course of business for which such service is performed or such service is performed outside of all the places of business of the enterprise for which such service is performed, and (iii) such individual is customarily engaged in an independently established trade, occupation, profession, or business. This subdivision is not intended to be a codification of the common law and shall be considered complete as written;

(c) Person means the state or any individual, partnership, limited liability company, association, joint-stock company, trust, corporation, political subdivision, or personal representative of the estate of a deceased individual, or the receiver, trustee, or successor thereof;

(d) Temporary employee means an employee of a temporary help firm assigned to work for the clients of such temporary help firm; and

(e) Temporary help firm means a firm that hires its own employees and assigns them to clients to support or supplement the client's workforce in work situations such as

employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects.

(2) Except as otherwise provided in subsection (3) of this section, an employer shall not:

(a) Publicly post or publicly display in any manner more than the last four digits of an employee's social security number, including intentional communication of more than the last four digits of the social security number or otherwise making more than the last four digits of the social security number available to the general public or to an employee's coworkers;

(b) Require an employee to transmit more than the last four digits of his or her social security number over the Internet unless the connection is secure or the information is encrypted;

(c) Require an employee to use more than the last four digits of his or her social security number to access an Internet web site unless a password, unique personal identification number, or other authentication device is also required to access the Internet web site; or

(d) Require an employee to use more than the last four digits of his or her social security number as an employee number for any type of employment-related activity.

(3)(a) Except as otherwise provided in subdivision (b) of this subsection, an employer shall be permitted to use more than the last four digits of an employee's social security number only for:

(i) Compliance with state or federal laws, rules, or regulations;

(ii) Internal administrative purposes, including provision of more than the last four digits of social security numbers to third parties for such purposes as administration of personnel benefit provisions for the employer and employment screening and staffing; and

(iii) Commercial transactions freely and voluntarily entered into by the employee with the employer for the purchase of goods or services.

(b) The following uses for internal administrative purposes described in subdivision (a)(ii) of this subsection shall not be permitted:

(i) As an identification number for occupational licensing;

(ii) As an identification number for drug-testing purposes except when required by state or federal law;

(iii) As an identification number for company meetings;

(iv) In files with unrestricted access within the company;

(v) In files accessible by any temporary employee unless the temporary employee is bonded or insured under a blanket corporate surety bond or equivalent commercial insurance; or

(vi) For posting any type of company information.

(4) An employer who violates this section is guilty of a Class V misdemeanor.

(5) Evidence of a conviction under this section is admissible in evidence at a civil trial as evidence of the employer's negligence.

Source: Laws 2007, LB674, § 16.
Operative date September 1, 2008.

ARTICLE 4

HEALTH AND SAFETY REGULATIONS

Section.

- 48-418. Transferred to section 48-2512.01.
- 48-418.01. Repealed. Laws 2007, LB 265, § 38.
- 48-418.02. Repealed. Laws 2007, LB 265, § 38.
- 48-418.03. Repealed. Laws 2007, LB 265, § 38.
- 48-418.04. Repealed. Laws 2007, LB 265, § 38.
- 48-418.05. Repealed. Laws 2007, LB 265, § 38.
- 48-418.06. Repealed. Laws 2007, LB 265, § 38.
- 48-418.07. Repealed. Laws 2007, LB 265, § 38.
- 48-418.08. Repealed. Laws 2007, LB 265, § 38.
- 48-418.09. Repealed. Laws 2007, LB 265, § 38.
- 48-418.10. Repealed. Laws 2007, LB 265, § 38.
- 48-418.11. Repealed. Laws 2007, LB 265, § 38.
- 48-418.12. Repealed. Laws 2007, LB 265, § 38.
- 48-418.14. Repealed. Laws 2007, LB 265, § 38.
- 48-446. Workplace Safety Consultation Program; created; inspections and consultations; elimination of hazards; fees; Workplace Safety Consultation Program Cash Fund; created; use; investment; records; violation; penalty; Department of Labor; powers and duties; liability.

48-418 Transferred to section 48-2512.01.

48-418.01 Repealed. Laws 2007, LB 265, § 38.
Operative date January 1, 2008.

48-418.02 Repealed. Laws 2007, LB 265, § 38.
Operative date January 1, 2008.

48-418.03 Repealed. Laws 2007, LB 265, § 38.
Operative date January 1, 2008.

48-418.04 Repealed. Laws 2007, LB 265, § 38.
Operative date January 1, 2008.

48-418.05 Repealed. Laws 2007, LB 265, § 38.
Operative date January 1, 2008.

48-418.06 Repealed. Laws 2007, LB 265, § 38.
Operative date January 1, 2008.

48-418.07 Repealed. Laws 2007, LB 265, § 38.
Operative date January 1, 2008.

48-418.08 Repealed. Laws 2007, LB 265, § 38.
Operative date January 1, 2008.

- 48-418.09 Repealed.** Laws 2007, LB 265, § 38.
Operative date January 1, 2008.
- 48-418.10 Repealed.** Laws 2007, LB 265, § 38.
Operative date January 1, 2008.
- 48-418.11 Repealed.** Laws 2007, LB 265, § 38.
Operative date January 1, 2008.
- 48-418.12 Repealed.** Laws 2007, LB 265, § 38.
Operative date January 1, 2008.
- 48-418.14 Repealed.** Laws 2007, LB 265, § 38.
Operative date January 1, 2008.

48-446 Workplace Safety Consultation Program; created; inspections and consultations; elimination of hazards; fees; Workplace Safety Consultation Program Cash Fund; created; use; investment; records; violation; penalty; Department of Labor; powers and duties; liability. (1) There is hereby created the Workplace Safety Consultation Program. It is the intent of the Legislature that such program help provide employees in Nebraska with safe and healthful workplaces.

(2) Under the Workplace Safety Consultation Program, the Department of Labor may conduct workplace inspections and consultations to determine whether employers are complying with standards issued by the federal Occupational Safety and Health Administration or the federal Mine Safety and Health Administration for safe and healthful workplaces. Workplace inspections and safety consultations shall be performed by employees of the Department of Labor who are knowledgeable and experienced in the occupational safety and health field and who are trained in the federal standards and in the recognition of safety and health hazards. The Department of Labor may employ qualified persons as may be necessary to carry out this section.

(3) All employers shall be subject to occupational safety and health inspections covering their Nebraska operations. Employers shall be selected by the Commissioner of Labor for inspection on the basis of factors intended to identify the likelihood of workplace injuries and to achieve the most efficient utilization of safety personnel of the Department of Labor. Such factors shall include:

- (a) The amount of premium paid by the employer for workers' compensation insurance;
- (b) The experience modification produced by the experience rating system referenced in section 44-7524;
- (c) Whether the employer is covered by workers' compensation insurance under section 44-3,158;
- (d) The relative hazard of the employer's type of business as evidenced by insurance rates or loss costs filed with the Director of Insurance for the insurance rating classification or classifications applicable to the employer;

(e) The nature, type, or frequency of accidents for the employer as may be reported to the Department of Insurance, the Nebraska Workers' Compensation Court, or the Department of Labor;

(f) Workplace hazards as may be reported to the Department of Insurance, the Nebraska Workers' Compensation Court, or the Department of Labor;

(g) Previous safety and health history;

(h) Possible employee exposure to toxic substances;

(i) Requests by employers for the Department of Labor to inspect their workplaces or otherwise provide consulting services on a basis by which the employer will reimburse the Department of Labor; and

(j) All other relevant factors.

(4) Hazards identified by an inspection shall be eliminated within a reasonable time as specified by the Commissioner of Labor.

(5) An employer who refuses to eliminate workplace hazards in compliance with an inspection shall be referred to the federal Occupational Safety and Health Administration or the federal Mine Safety and Health Administration for enforcement.

(6) At the discretion of the Commissioner of Labor, inspection of an employer may be repeated to ensure compliance by the employer, with the expenses incurred by the Department of Labor to be paid by the employer.

(7) The Commissioner of Labor shall adopt and promulgate rules and regulations establishing a schedule of fees for consultations and inspections. Such fees shall be established with due regard for the costs of administering the Workplace Safety Consultation Program. The cost of consultations and inspections shall be borne by each employer for which these services are rendered.

(8) There is hereby created the Workplace Safety Consultation Program Cash Fund. All fees collected pursuant to the Workplace Safety Consultation Program shall be remitted to the State Treasurer for credit to the fund and shall be used for the sole purpose of administering the program. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(9) Each employer provided a consultation or inspection by the Department of Labor shall retain up-to-date records for each place of employment as recommended by the inspection or consultation. The employer shall make such records available to the Department of Labor upon request to ensure continued progress of the employer's efforts to comply with the federal Occupational Safety and Health Administration or the federal Mine Safety and Health Administration standards.

(10) Any person who knowingly operates or causes to be operated a business in violation of recommendations to correct serious or imminent hazards as identified by the Workplace Safety Consultation Program shall be referred to the federal Occupational Safety and Health Administration or the federal Mine Safety and Health Administration.

(11) The Attorney General, acting on behalf of the Commissioner of Labor, or the county attorney in a county in which a business is located or operated may apply to the district court for an order against any employer in violation of this section.

(12) The Workplace Safety Consultation Program shall not be construed to alter the duty of care or the liability of an owner or a business for injuries or death of any person or damage to any property. The state and its officers and employees shall not be construed to assume liability arising out of an accident involving a business by reason of administration of the Workplace Safety Consultation Program.

(13) Inspectors employed by the Department of Labor may inspect any place of employment with or without notice during normal hours of operation. Such inspectors may suspend the operation of equipment determined to constitute an imminent danger situation. Operation of such equipment shall not resume until the hazardous or unsafe condition is corrected to the satisfaction of the inspector.

(14) No person with a reasonable cause to believe the truth of the information shall be subject to civil liability for libel, slander, or any other relevant tort cause of action by virtue of providing information without malice on workplace hazards or the nature, type, or frequency of accidents to the Department of Insurance, the Nebraska Workers' Compensation Court, or the Department of Labor.

(15) Safety and health inspectors employed by the Department of Labor shall have the right and power to enter any premise, building, or structure, public or private, for the purpose of inspecting any work area or equipment. A refusal by the employer of entry by a safety and health inspector employed by the Department of Labor shall be a violation of this subsection. If the Commissioner of Labor finds, after notice and hearing, that an employer has violated this subsection, he or she may order payment of a civil penalty of not more than one thousand dollars for each violation. Each day of continued violation shall constitute a separate violation.

(16) The Commissioner of Labor shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1993, LB 757, § 36; Laws 1994, LB 1066, § 37; Laws 2000, LB 1119, § 41; Laws 2001, LB 180, § 6; Laws 2007, LB117, § 34.
Effective date September 1, 2007.

Cross Reference

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 6

EMPLOYMENT SECURITY

Section.

48-601. Act, how cited.

48-602. Terms, defined.

48-606. Commissioner; duties; powers; annual report; schedule of fees.

- 48-612. Employers; records and reports required; privileged communications; violation; penalty.
- 48-612.01. Employer information; disclosure authorized; costs; prohibited redisclosure; penalty.
- 48-624. Benefits; weekly benefit amount; calculation.
- 48-647. Benefits; assignments void; exemption from legal process; exception; child support obligations; food stamp benefits overissuance; disclosure required; collection.
- 48-649. Combined tax rate; how computed.
- 48-649.01. Repealed. Laws 2007, LB 265, § 39.
- 48-652. Employer's experience account; reimbursement account; contributions by employer; liability; termination; reinstatement.
- 48-663.01. Benefits; false statements by employee; forfeit; appeal; failure to repay overpayment of benefits; levy authorized; procedure; failure or refusal to honor levy; liability.
- 48-664. Benefits; false statements by employer; penalty; failure or refusal to make combined tax payment.

48-601 Act, how cited. Sections 48-601 to 48-671 shall be known and may be cited as the Employment Security Law.

Source: Laws 1937, c. 108, § 1, p. 370; Laws 1941, c. 94, § 14, p. 401; C.S.Supp., 1941, § 48-701; R.S. 1943, § 48-601; Laws 1949, c. 163, § 1, p. 417; Laws 1953, c. 167, § 1, p. 520; Laws 1981, LB 470, § 1; Laws 1985, LB 339, § 1; Laws 1985, LB 343, § 1; Laws 1994, LB 1337, § 1; Laws 1996, LB 1072, § 1; Laws 2001, LB 192, § 1; Laws 2005, LB 484, § 2; Laws 2005, LB 739, § 1; Laws 2007, LB265, § 3.
Operative date July 1, 2007.

48-602 Terms, defined. For purposes of the Employment Security Law, unless the context otherwise requires:

(1) Base period means the last four completed calendar quarters immediately preceding the first day of an individual's benefit year, except that the commissioner may prescribe by rule and regulation that base period means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year;

(2) Benefits means the money payments payable to an individual with respect to his or her unemployment;

(3) Benefit year, with respect to any individual, means the one-year period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits, and thereafter the one-year period beginning with the first day of the first week with respect to which the individual next files a valid claim for benefits after the termination of his or her last preceding benefit year. Any claim for benefits made in accordance with section 48-629 shall be deemed to be a valid claim for the purpose of this subdivision if the individual has been paid the wages for insured work required under section 48-627. For the purposes of this subdivision a week with respect to which an individual files a valid claim shall be deemed to be in, within, or during that benefit year which includes the greater part of such week;

(4) Calendar quarter means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, or the equivalent thereof as the Commissioner of Labor may by rule and regulation prescribe;

(5) Client means any individual, partnership, limited liability company, corporation, or other legally recognized entity that contracts with a professional employer organization to obtain professional employer services relating to worksite employees through a professional employer agreement;

(6) Combined tax means the employer liability consisting of contributions and the state unemployment insurance tax;

(7) Combined tax rate means the rate which is applied to wages to determine the combined taxes due;

(8) Commissioner means the Commissioner of Labor;

(9) Contribution rate means the percentage of the combined tax rate used to determine the contribution portion of the combined tax;

(10) Contributions means that portion of the combined tax based upon the contribution rate portion of the combined tax rate which is deposited in the state Unemployment Compensation Fund as required by sections 48-648 and 48-649;

(11) Department means the Department of Labor;

(12) Employment office means a free public employment office or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices, including public employment offices operated by an agency of a foreign government;

(13) Fund means the Unemployment Compensation Fund established by section 48-617 to which all contributions and payments in lieu of contributions required and from which all benefits provided shall be paid;

(14) Hospital means an institution which has been licensed, certified, or approved by the Department of Health and Human Services as a hospital;

(15) Institution of higher education means an institution which: (a) Admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate; (b) is legally authorized in this state to provide a program of education beyond high school; (c) provides an educational program for which it awards a bachelor's degree or higher or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and (d) is a public or other nonprofit institution; notwithstanding any of the foregoing provisions of this subdivision, all colleges and universities in this state are institutions of higher education for purposes of this section;

(16) Insured work means employment for employers;

(17) Leave of absence means any absence from work: (a) Mutually and voluntarily agreed to by the employer and the employee; (b) mutually and voluntarily agreed to between the employer and the employee's bargaining agent; or (c) to which the employee is entitled to as a matter of state or federal law;

(18) Paid vacation leave means a period of time while employed or following separation from employment in which the individual renders no services to the employer but is entitled to receive vacation pay equal to or exceeding his or her base weekly wage;

(19) Payments in lieu of contributions means the money payments to the Unemployment Compensation Fund required by sections 48-649, 48-652, 48-660.01, and 48-661;

(20) Professional employer agreement means a written professional employer services contract whereby:

(a) A professional employer organization agrees to provide payroll services, employee benefit administration, or personnel services for a majority of the employees providing services to the client at a client worksite;

(b) The agreement is intended to be ongoing rather than temporary in nature; and

(c) Employer responsibilities for worksite employees, including those of hiring, firing, and disciplining, are shared between the professional employer organization and the client by contract. The term professional employer agreement shall not include a contract between a parent corporation, company, or other entity and a wholly owned subsidiary;

(21) Professional employer organization means any individual, partnership, limited liability company, corporation, or other legally recognized entity that enters into a professional employer agreement with a client or clients for a majority of a client's workforce at a client worksite. The term professional employer organization does not include an insurer as defined in section 44-103 or a temporary help firm;

(22) State includes, in addition to the states of the United States of America, any dependency of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, and the District of Columbia;

(23) State unemployment insurance tax means that portion of the combined tax which is based upon the state unemployment insurance tax rate portion of the combined tax rate and which is deposited in the State Unemployment Insurance Trust Fund as required by sections 48-648 and 48-649;

(24) State unemployment insurance tax rate means the percentage of the combined tax rate used to determine the state unemployment insurance tax portion of the combined tax;

(25) Temporary employee means an employee of a temporary help firm assigned to work for the clients of such temporary help firm;

(26) Temporary help firm means a firm that hires its own employees and assigns them to clients to support or supplement the client's work force in work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects;

(27) Unemployed means an individual during any week in which the individual performs no service and with respect to which no wages are payable to the individual or any week of less than full-time work if the wages payable with respect to such week are less than the individual's weekly benefit amount, but does not include any individual on a leave of absence or on paid vacation leave. When an agreement between the employer and a bargaining unit representative does not allocate vacation pay allowance or pay in lieu of vacation to a specified

period of time during a period of temporary layoff or plant shutdown, the payment by the employer or his or her designated representative will be deemed to be wages as defined in this section in the week or weeks the vacation is actually taken;

(28) Unemployment Trust Fund means the trust fund in the Treasury of the United States of America established under section 904 of the federal Social Security Act, 42 U.S.C. 1104, as such section existed on March 2, 2001, which receives credit from the state Unemployment Compensation Fund;

(29) Wages, except with respect to services performed in employment as provided in subdivisions (4)(c) and (d) of section 48-604, means all remuneration for personal services, including commissions and bonuses, remuneration for personal services paid under a contract of hire, and the cash value of all remunerations in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules and regulations prescribed by the commissioner. After December 31, 1985, wages includes tips which are received while performing services which constitute employment and which are included in a written statement furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code as defined in section 49-801.01.

With respect to services performed in employment in agricultural labor as is provided in subdivision (4)(c) of section 48-604, wages means cash remuneration and the cash value of commodities not intended for personal consumption by the worker and his or her immediate family for such services. With respect to services performed in employment in domestic service as is provided in subdivision (4)(d) of section 48-604, wages means cash remuneration for such services.

The term wages does not include:

(a) The amount of any payment, including any amount paid by an employer for insurance or annuities or into a fund to provide for such payment, made to, or on behalf of, an individual in employment or any of his or her dependents under a plan or system established by an employer which makes provision for such individuals generally or for a class or classes of such individuals, including any amount paid by an employer for insurance or annuities or into a fund to provide for any such payment, on account of (i) sickness or accident disability, except, in the case of payments made to an employee or any of his or her dependents, this subdivision (i) shall exclude from wages only payments which are received under a workers' compensation law, (ii) medical and hospitalization expenses in connection with sickness or accident disability, or (iii) death;

(b) The payment by an employer, without deduction from the remuneration of the employee, of the tax imposed upon an employee under section 3101 of the Internal Revenue Code as defined in section 49-801.01;

(c) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an individual after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

(d) Any payment made to, or on behalf of, an individual or his or her beneficiary (i) from or to a trust described in section 401(a) of the Internal Revenue Code as defined in section 49-801.01 which is exempt from tax under section 501(a) of the Internal Revenue Code as defined in section 49-801.01 at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust or (ii) under or to an annuity plan which, at the time of such payment, meets the requirements of section 401 of the Internal Revenue Code as defined in section 49-801.01;

(e) Any payment made to, or on behalf of, an employee or his or her beneficiary (i) under a simplified employee pension as defined by the commissioner, (ii) under or to an annuity contract as defined by the commissioner, other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement, whether evidenced by a written instrument or otherwise, (iii) under or to an exempt governmental deferred compensation plan as defined by the commissioner, (iv) to supplement pension benefits under a plan or trust, as defined by the commissioner, to take into account some portion or all of the increase in the cost of living since retirement, but only if such supplemental payments are under a plan which is treated as a welfare plan, or (v) under a cafeteria benefits plan;

(f) Remuneration paid in any medium other than cash to an individual for service not in the course of the employer's trade or business;

(g) Benefits paid under a supplemental unemployment benefit plan which satisfies the eight points set forth in Internal Revenue Service Revenue Ruling 56-249 as the ruling existed on March 2, 2001, and is in compliance with the standards set forth in Internal Revenue Service Revenue Rulings 58-128 and 60-330 as the rulings existed on March 2, 2001; and

(h) Remuneration for service performed in the employ of any state in the exercise of his or her duties as a member of the Army National Guard or Air National Guard or in the employ of the United States of America as a member of any military reserve unit;

(30) Week means such period of seven consecutive days as the commissioner may by rule and regulation prescribe;

(31) Week of unemployment with respect to any individual means any week during which he or she performs less than full-time work and the wages payable to him or her with respect to such week are less than his or her weekly benefit amount;

(32) Wholly owned subsidiary means a corporation, company, or other entity which has eighty percent or more of its outstanding voting stock or membership owned or controlled, directly or indirectly, by the parent entity; and

(33) Worksite employee means a person receiving wages or benefits from a professional employer organization pursuant to the terms of a professional employer agreement for work performed at a client's worksite.

Source: Laws 1937, c. 108, § 2, p. 370; Laws 1939, c. 56, § 1, p. 229; Laws 1940, Spec. Sess., c. 2, § 1, p. 54; Laws 1941, c. 94, § 1, p. 373; C.S.Supp., 1941, § 48-702; Laws 1943, c. 111, §§ 1, 2, p. 390; R.S. 1943, § 48-602; Laws 1947, c. 175, § 1, p. 563; Laws 1949, c. 163, § 2, p. 417; Laws 1951, c. 156, § 1, p. 626; Laws 1953, c. 167, § 2, p. 520; Laws 1961, c. 235, § 3, p. 695; Laws 1961, c. 238, § 1, p. 701; Laws 1971, LB 651, § 1; Laws 1972, LB 1392, § 1; Laws 1977, LB 509, § 1; Laws 1979, LB 581, § 1; Laws 1980, LB 800, § 1; Laws 1983, LB 248, § 1; Laws 1985, LB 339, § 2; Laws 1986, LB 950, § 1; Laws 1988, LB 1033, § 1; Laws 1992, LB 879, § 1; Laws 1993, LB 121, § 289; Laws 1994, LB 286, § 1; Laws 1994, LB 1337, § 2; Laws 1995, LB 77, § 1; Laws 1995, LB 574, § 51; Laws 1996, LB 1044, § 274; Laws 1999, LB 168, § 1; Laws 1999, LB 608, § 1; Laws 2001, LB 192, § 3; Laws 2002, LB 921, § 1; Laws 2005, LB 484, § 3; Laws 2005, LB 739, § 2; Laws 2007, LB 265, § 4; Laws 2007, LB 296, § 216.
Operative date July 1, 2007.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 265, section 4, with LB 296, section 216, to reflect all amendments.

48-606 Commissioner; duties; powers; annual report; schedule of fees. (1) It shall be the duty of the Commissioner of Labor to administer the Employment Security Law. He or she shall have the power and authority to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as he or she deems necessary or suitable to that end if the same are consistent with the Employment Security Law. The commissioner shall determine his or her own organization and methods of procedure in accordance with such law and shall have an official seal which shall be judicially noticed. Not later than the thirty-first day of December of each year, the commissioner shall submit to the Governor a report covering the administration and operation of such law during the preceding fiscal year and shall make such recommendations for amendments to such law as he or she deems proper. Such report shall include a balance sheet of the money in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the commissioner in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the commissioner believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, he or she shall promptly inform the Governor and the Clerk of the Legislature thereof and make recommendations with respect thereto. Each member of the Legislature shall receive a copy of such information by making a request for it to the commissioner.

(2) The commissioner may establish a schedule of fees to recover the cost of services including, but not limited to, copying, preparation of forms and other materials, responding to inquiries for information, payments for returned check charges and electronic payments not accepted, and furnishing publications prepared by the commissioner pursuant to the Employment Security Law. Fees received pursuant to this subsection shall be deposited in the Employment Security Administration Fund.

(3) Nothing in this section shall be construed to allow the department to charge any fee for making a claim for unemployment benefits or receiving assistance from the state employment

service established pursuant to section 48-662 when performing functions within the purview of the federal Wagner-Peyser Act, 29 U.S.C. 49 et seq., as amended.

Source: Laws 1937, c. 108, § 11, p. 390; Laws 1941, c. 94, § 8, p. 396; C.S.Supp.,1941, § 48-711; R.S.1943, § 48-606; Laws 1953, c. 167, § 4(1), p. 529; Laws 1955, c. 231, § 8, p. 720; Laws 1979, LB 322, § 17; Laws 1985, LB 339, § 6; Laws 1987, LB 278, § 1; Laws 2003, LB 195, § 1; Laws 2007, LB265, § 5.
Operative date July 1, 2007.

48-612 Employers; records and reports required; privileged communications; violation; penalty. (1) Each employer, whether or not subject to the Employment Security Law, shall keep true and accurate work records containing such information as the Commissioner of Labor may prescribe. Such records shall be open to inspection and be subject to being copied by the commissioner or his or her authorized representatives at any reasonable time and as often as may be necessary. The commissioner and the appeal tribunal may require from any such employer any sworn or unsworn reports, with respect to persons employed by it, which he, she, or it deems necessary for the effective administration of such law. Except as otherwise provided in section 48-612.01, information thus obtained or obtained from any individual pursuant to the administration of such law shall be held confidential.

(2) Any employee of the commissioner who violates any provision of sections 48-606 to 48-616 shall be guilty of a Class III misdemeanor.

(3) All letters, reports, communications, or any other matters, either oral or written, from an employer or his or her workers to each other or to the commissioner or any of his or her agents, representatives, or employees which shall have been written or made in connection with the requirements and administration of the Employment Security Law, or the rules and regulations thereunder, shall be absolutely privileged and shall not be made the subject matter or basis for any suit for slander or libel in any court of this state, unless the same be false in fact and malicious in intent.

Source: Laws 1937, c. 108, § 11, p. 392; C.S.Supp.,1941, § 48-711; R.S.1943, § 48-612; Laws 1945, c. 115, § 2, p. 381; Laws 1977, LB 40, § 290; Laws 1985, LB 339, § 11; Laws 1993, LB 757, § 31; Laws 2001, LB 192, § 5; Laws 2007, LB265, § 6.
Operative date July 1, 2007.

48-612.01 Employer information; disclosure authorized; costs; prohibited redisclosure; penalty. (1) Information obtained pursuant to subsection (1) of section 48-612 may be disclosed under the following circumstances:

(a) To the extent necessary for the proper presentation of the contest of an unemployment benefit claim or tax appeal. Any claimant or employer or representative of a claimant or employer, as a party before an appeal tribunal or court regarding an unemployment claim or tax appeal, shall be supplied with information obtained in the administration of the Employment Security Law, to the extent necessary for the proper presentation of his, her, or its claim or appeal;

(b) The Nebraska Workers' Compensation Court may use the names, addresses, and identification numbers of employers for purposes of enforcement of the Nebraska Workers' Compensation Act;

(c) Appeals records and decisions rendered under the Employment Security Law and designated as precedential determinations by the commissioner on the coverage of employers, employment, wages, and benefit eligibility, if all social security numbers have been removed and such disclosure is otherwise consistent with federal and state law;

(d) To a public official for use in the performance of his or her official duties. For purposes of this subdivision, performance of official duties means the administration or enforcement of law or the execution of the official responsibilities of a federal, state, or local elected official. Administration of law includes research related to the law administered by the public official. Execution of official responsibilities does not include solicitation of contributions or expenditures to or on behalf of a candidate for public office or to a political party;

(e) To an agent or contractor of a public official to whom disclosure is permissible under subdivision (d) of this subsection;

(f) Information collected exclusively for statistical purposes under a cooperative agreement with the federal Bureau of Labor Statistics. This subdivision does not restrict or impose any condition on the transfer of any other information to the federal Bureau of Labor Statistics under an agreement or the federal Bureau of Labor Statistics' disclosure or use of such information; and

(g) In response to a court order.

(2) Information about an individual or employer obtained pursuant to subsection (1) of section 48-612 may be disclosed to:

(a) One who acts as an agent for the individual or employer when the agent presents a written release from the individual or employer, where practicable, or other evidence of authority to act on behalf of the individual or employer;

(b) An elected official who is performing constituent services if the official presents reasonable evidence that the individual or employer has authorized such disclosure;

(c) An attorney who presents written evidence that he or she is representing the individual or employer in a matter arising under the Employment Security Law; or

(d) A third party or its agent carrying out the administration or evaluation of a public program, if that third party or agent obtains a written release from the individual or employer to whom the information pertains. To constitute informed consent, the release shall be signed and shall include a statement:

(i) Specifically identifying the information that is to be disclosed;

(ii) That state government files will be accessed to obtain that information;

(iii) Identifying the specific purpose or purposes for which the information is sought and that information obtained under the release will only be used for that purpose or purposes; and

(iv) Identifying and describing all the parties who may receive the information disclosed.

(3) Information obtained pursuant to subsection (1) of section 48-612 may be disclosed under the following circumstances:

(a) Information about an individual or employer shall only be disclosed to the respective individual or employer;

(b) To a local, state, or federal governmental official, other than a clerk of court, attorney, or notary public acting on behalf of a litigant, with authority to obtain such information by subpoena under state or federal law; and

(c) Disclosures to a federal official for purposes of unemployment compensation program oversight and audits, including disclosures under 20 C.F.R. part 601 and 29 C.F.R. parts 96 and 97 as they existed on January 1, 2007.

(4) If the purpose for which information is provided under subsection (1), (2), or (3) of this section is not related to the administration of the Employment Security Law or the unemployment insurance compensation program of another jurisdiction, the commissioner shall recover the costs of providing such information from the requesting individual or entity prior to providing the information to such individual or entity unless the costs are nominal or the entity is a governmental agency which the commissioner has determined provides reciprocal services.

(5) Any person who receives information under subsection (1) or (2) of this section and rediscloses such information for any purpose other than the purpose for which it was originally obtained shall be guilty of a Class III misdemeanor.

Source: Laws 2007, LB265, § 7.
Operative date July 1, 2007.

Cross Reference

Nebraska Workers' Compensation Act, see section 48-1,110.

48-624 Benefits; weekly benefit amount; calculation. (1) For any benefit year beginning on or after January 1, 2001, through December 31, 2005, an individual's weekly benefit amount shall be one-half his or her average weekly wage rounded down to the nearest even whole dollar amount, but shall not exceed one-half of the state average weekly wage as annually determined under section 48-121.02.

(2) For any benefit year beginning on or after January 1, 2006, through December 31, 2007, an individual's weekly benefit amount shall be one-half of his or her average weekly wage rounded down to the nearest even whole dollar amount, but shall not exceed two hundred eighty-eight dollars per week.

(3) For any benefit year beginning on or after January 1, 2008, through December 31, 2010, an individual's weekly benefit amount shall be one-half of his or her average weekly wage rounded down to the nearest even whole dollar amount, but shall not exceed the lesser of one-half of the state average weekly wage as annually determined under section 48-121.02 or the previous year's maximum weekly benefit amount plus ten dollars per week.

(4) For any benefit year beginning on or after January 1, 2011, an individual's weekly benefit amount shall be one-half of his or her average weekly wage rounded down to the nearest even whole dollar amount, but shall not exceed one-half of the state average weekly wage as annually determined under section 48-121.02.

(5) For purposes of this section, an individual's average weekly wage shall equal the wages paid for insured work in the highest quarter of the base period divided by thirteen.

Source: Laws 1937, c. 108, § 3, p. 375; Laws 1939, c. 56, § 2, p. 233; Laws 1941, c. 94, § 2, p. 381; C.S.Supp.,1941, § 48-703; R.S.1943, § 48-624; Laws 1945, c. 114, § 2, p. 371; Laws 1949, c. 163, § 1, p. 423; Laws 1951, c. 157, § 1, p. 630; Laws 1953, c. 168, § 1, p. 541; Laws 1955, c. 190, § 5, p. 542; Laws 1957, c. 209, § 1, p. 738; Laws 1959, c. 229, § 1, p. 802; Laws 1963, c. 291, § 1, p. 870; Laws 1965, c. 286, § 1, p. 819; Laws 1967, c. 299, § 1, p. 814; Laws 1969, c. 401, § 1, p. 1394; Laws 1971, LB 651, § 4; Laws 1972, LB 1391, § 1; Laws 1973, LB 333, § 1; Laws 1974, LB 775, § 1; Laws 1975, LB 475, § 1; Laws 1977, LB 337, § 1; Laws 1979, LB 183, § 1; Laws 1983, LB 524, § 1; Laws 1985, LB 216, § 1; Laws 1987, LB 446, § 1; Laws 1990, LB 315, § 1; Laws 1994, LB 286, § 2; Laws 1998, LB 225, § 1; Laws 2005, LB 739, § 5; Laws 2007, LB265, § 8.
Operative date July 1, 2007.

48-647 Benefits; assignments void; exemption from legal process; exception; child support obligations; food stamp benefits overissuance; disclosure required; collection. (1) Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under sections 48-623 to 48-626 shall be void except as set forth in this section. Such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt. Benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or his or her spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this section shall be void. Any assignment, pledge, or encumbrance of any right or claim to contributions or to any money credited to any employer's reserve account in the Unemployment Compensation Fund shall be void, and the same shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt, and any waiver of any exemption provided for in this section shall be void.

(2)(a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not he or she owes child support obligations as defined under subdivision (h) of this subsection. If such individual discloses that he or she owes child support obligations and is determined to be eligible for unemployment compensation, the commissioner shall notify the Department of Health and Human Services that the individual has been determined to be eligible for unemployment compensation.

(b) The commissioner shall deduct and withhold from any unemployment compensation otherwise payable to an individual disclosing child support obligations:

(i) The amount specified by the individual to the commissioner to be deducted under this subsection, if neither subdivision (ii) nor (iii) of this subdivision is applicable;

(ii) The amount, if any, determined pursuant to an agreement between the Department of Health and Human Services and such individual owing the child support obligations to have a specified amount withheld and such agreement being submitted to the commissioner, unless subdivision (iii) of this subdivision is applicable; or

(iii) The amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process, as that term is defined in subdivision (2)(i) of this section, properly served upon the commissioner.

(c) Any amount deducted and withheld under subdivision (b) of this subsection shall be paid by the commissioner to the Department of Health and Human Services.

(d) Any amount deducted and withheld under subdivision (b) or (g) of this subsection shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the Department of Health and Human Services in satisfaction of his or her child support obligations.

(e) For purposes of subdivisions (a) through (d) and (g) of this subsection, the term unemployment compensation shall mean any compensation payable under the Employment Security Law and including amounts payable by the commissioner pursuant to an agreement by any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(f) This subsection shall apply only if appropriate arrangements have been made for reimbursement by the Department of Health and Human Services for the administrative costs incurred by the commissioner under this section which are attributable to child support obligations being enforced by the department.

(g) The Department of Health and Human Services and the commissioner shall develop and implement a collection system to carry out the intent of this subdivision. The collection system shall, at a minimum, provide that:

(i) The commissioner shall periodically notify the Department of Health and Human Services of the information listed in section 43-1719 with respect to individuals determined to be eligible for unemployment compensation during such period;

(ii) Unless the county attorney, the authorized attorney, or the Department of Health and Human Services has sent a notice on the same support order under section 43-1720, upon the notification required by subdivision (2)(g)(i) of this section, the Department of Health and Human Services shall send notice to any such individual who owes child support obligations and who is subject to income withholding pursuant to subdivision (2)(a), (2)(b)(ii), or (2)(b)(iii) of section 43-1718.01. The notice shall be sent by certified mail to the last-known address of the individual and shall state the same information as required under section 43-1720;

(iii)(A) If the support obligation is not based on a foreign support order entered pursuant to section 43-1729 and the individual requests a hearing, the Department of Health and Human Services shall hold a hearing within fifteen days of the date of receipt of the request. The hearing shall be in accordance with the Administrative Procedure Act. The assignment shall be held in abeyance pending the outcome of the hearing. The department shall notify the individual and the commissioner of its decision within fifteen days of the date the hearing is held; and

(B) If the support obligation is based on a foreign support order entered pursuant to section 43-1729 and the individual requests a hearing, the county attorney or authorized attorney shall apply the procedures described in sections 43-1732 to 43-1742;

(iv)(A) If no hearing is requested by the individual under this subsection or pursuant to a notice sent under section 43-1720, (B) if after a hearing under this subsection or section

43-1721 the Department of Health and Human Services determines that the assignment should go into effect, (C) in cases in which the court has ordered income withholding for child support pursuant to subsection (1) of section 43-1718.01, or (D) in cases in which the court has ordered income withholding for child support pursuant to section 43-1718.02 and the case subsequently becomes one in which child support collection services are being provided under Title IV-D of the federal Social Security Act, as amended, the Department of Health and Human Services shall certify to the commissioner the amount to be withheld for child support obligations from the individual's unemployment compensation. Such amount shall not in any case exceed the maximum amount permitted to be withheld under section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b)(2)(A) and (B), and the amount withheld to satisfy an arrearage of child support when added to the amount withheld to pay current support shall not exceed such maximum amount;

(v) The collection system shall comply with the requirements of Title III and Title IV-D of the federal Social Security Act, as amended;

(vi) The collection system shall be in addition to and not in substitution for or derogation of any other available remedy; and

(vii) The Department of Health and Human Services and the commissioner shall adopt and promulgate rules and regulations to carry out subdivision (2)(g) of this section.

(h) For purposes of this subsection, the term child support obligations shall include only obligations which are being enforced pursuant to a plan described in section 454 of the federal Social Security Act which has been approved by the Secretary of Health and Human Services under Part D of Title IV of the federal Social Security Act.

(i) For purposes of this subsection, the term legal process shall mean any writ, order, summons, or other similar process in the nature of garnishment, which:

(i) Is issued by a court of competent jurisdiction of any state, territory, or possession of the United States or an authorized official pursuant to order of such a court of competent jurisdiction or pursuant to state law. For purposes of this subdivision, the chief executive officer of the Department of Health and Human Services shall be deemed an authorized official pursuant to order of a court of competent jurisdiction or pursuant to state law; and

(ii) Is directed to, and the purpose of which is to compel, the commissioner to make a payment for unemployment compensation otherwise payable to an individual in order to satisfy a legal obligation of such individual to provide child support.

(j) Nothing in this subsection shall be construed to authorize withholding from unemployment compensation of any support obligation other than child support obligations.

(3)(a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not he or she owes an uncollected overissuance, as defined in section 13(c)(1) of the federal Food Stamp Act of 1977, of food stamp benefits, if not otherwise known or disclosed to the state food stamp agency. The commissioner shall notify the state food stamp agency enforcing such obligation of any individual disclosing that

he or she owes an uncollected overissuance whom the commissioner determines is eligible for unemployment compensation.

(b) The commissioner shall deduct and withhold from any unemployment compensation payable to an individual who owes an uncollected overissuance (i) the amount specified by the individual to the commissioner to be deducted and withheld under this subsection, (ii) the amount, if any, determined pursuant to an agreement submitted to the state food stamp agency under section 13(c)(3)(A) of the federal Food Stamp Act of 1977, or (iii) any amount otherwise required to be deducted and withheld from unemployment compensation pursuant to section 13(c)(3)(B) of such federal act.

(c) Any amount deducted and withheld under this subsection shall be paid by the commissioner to the state food stamp agency.

(d) Any amount deducted and withheld under subdivision (b) of this subsection shall be treated for all purposes as if it were paid to the individual as unemployment compensation and paid by such individual to the state food stamp agency as repayment of the individual's uncollected overissuance.

(e) For purposes of this subsection, unemployment compensation means any compensation payable under the Employment Security Law, including amounts payable by the commissioner pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(f) This subsection applies only if arrangements have been made for reimbursement by the state food stamp agency for the administrative costs incurred by the commissioner under this subsection which are attributable to the repayment of uncollected overissuances to the state food stamp agency.

Source: Laws 1937, c. 108, § 15, p. 400; C.S.Supp., 1941, § 48-714; R.S. 1943, § 48-647; Laws 1982, LB 801, § 5; Laws 1985, LB 339, § 32; Laws 1985, Second Spec. Sess., LB 7, § 76; Laws 1990, LB 974, § 1; Laws 1993, LB 523, § 26; Laws 1994, LB 1224, § 81; Laws 1995, LB 240, § 3; Laws 1996, LB 1044, § 275; Laws 1996, LB 1155, § 21; Laws 1997, LB 307, § 106; Laws 1997, LB 864, § 5; Laws 1998, LB 1073, § 56; Laws 2007, LB 296, § 217.
Operative date July 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

48-649 Combined tax rate; how computed. The commissioner shall, for each calendar year, determine the combined tax rate applicable to each employer on the basis of his or her actual experience in the payment of contributions and with respect to benefits charged against his or her separate experience account, in accordance with the following requirements:

(1) The commissioner shall, by December 1 of each calendar year, and based upon information available through the department, determine the state unemployment insurance tax rate for the following year. The state unemployment insurance tax rate shall be zero percent if:

(a) The average balance in the State Unemployment Insurance Trust Fund at the end of any three months in the preceding calendar year is greater than one percent of state taxable wages for the same preceding year;

(b) The balance in the State Unemployment Insurance Trust Fund equals or exceeds thirty percent of the average month end balance of the state's account in the Unemployment Trust Fund for the three lowest calendar months in the preceding year; or

(c) The state advisory council determines that a zero percent state unemployment insurance tax rate is in the best interests of preserving the integrity of the state's account in the Unemployment Trust Fund;

(2)(a) If the state unemployment insurance tax rate is not zero percent as determined in this section, the combined tax rate shall be divided so that not less than eighty percent of the combined tax rate equals the contribution rate and not more than twenty percent of the combined tax rate equals the state unemployment insurance tax rate except for employers who are assigned a combined tax rate of five and four-tenths percent or more. For those employers, the state unemployment insurance tax rate shall equal zero and their combined tax rate shall equal their contribution rate.

(b) When the state unemployment insurance tax rate is determined to be zero percent pursuant to subdivision (1) of this section, the contribution rate for all employers shall equal one hundred percent of the combined tax rate;

(3) In calendar year 2005, an employer's combined tax rate shall be three and five-tenths percent of his or her annual payroll unless and until (a) benefits have been payable from and chargeable to his or her experience account throughout the preceding one calendar year and (b) contributions have been payable to the fund and credited to his or her experience account with respect to the two preceding calendar years. Subject to fair and reasonable rules and regulations of the commissioner issued with due regard for the solvency of the fund, in calendar year 2005 the combined tax rate required of each employer who meets the requirements of subdivisions (a) and (b) of this subdivision shall be based directly on his or her contributions to and benefit experience of his or her experience account and shall be determined by the commissioner for each calendar year at its beginning. Such rate shall not be greater than three and five-tenths percent of his or her annual payroll if his or her experience account exhibits a positive balance as of the beginning of such calendar year, but for any employer who has been subject to the payment of contributions for any two preceding calendar years, regardless of whether such years are consecutive, and whose experience account exhibits a negative balance as of the beginning of such calendar year, the rate shall be greater than three and five-tenths percent of his or her annual payroll but not greater than five and four-tenths percent of his or her annual payroll until such time as the experience account exhibits a positive balance, and thereafter the rate shall not be greater than three and five-tenths percent of his or her annual payroll. For calendar year 2005, the standard rate shall be five and four-tenths percent of the employer's annual payroll. As used in this subdivision, standard rate shall mean the rate from which all reduced rates are calculated;

(4)(a) Effective January 1, 2006, an employer's combined tax rate (i) for employers other than employers engaged in the construction industry shall be the lesser of the state's average combined tax rate as determined pursuant to subdivisions (4)(e), (4)(f), and (4)(g) of this

section or two and five-tenths percent and (ii) for employers in the construction industry shall be the category twenty rate determined pursuant to subdivisions (4)(e) and (4)(f) of this section, unless and until:

(A) Benefits have been payable from and chargeable to his or her experience account throughout the preceding four calendar quarters; and

(B) Contributions have been payable to the fund and credited to his or her experience account with respect to each of the two preceding four-calendar-quarter periods.

For purposes of this subdivision (4)(a), employers engaged in the construction industry means all employers primarily engaged in business activities classified as sector 23 business activities under the North American Industrial Classification System.

(b) In no event shall the combined tax rate for employers who fail to meet the requirements of subdivision (4)(a) of this section be less than one and twenty-five hundredths percent.

(c) For any employer who has not been subject to the payment of contributions during each of the two four-calendar-quarter periods ending on September 30 of any year, but has been subject to the payment of contributions in any two four-calendar-quarter periods, regardless of whether such four-calendar-quarter periods are consecutive, such employer's combined tax rate for the following tax year shall be:

(i) The highest combined tax rate for employers with a positive experience account balance if the employer's experience account balance exhibits a positive balance as of September 30 of the year of rate computation; or

(ii) The standard rate if the employer's experience account exhibits a negative balance as of September 30 of the year of rate computation.

(d) Beginning with rate calculations for calendar year 2006 and each year thereafter, the combined tax rate for employers who meet the requirements of subdivision (4)(a) of this section shall be calculated according to subdivisions (4)(e), (4)(f), and (4)(g) of this section and shall be based upon the employer's experience rating record and determined from the employer's reserve ratio, which is the percent obtained by dividing the amount by which, if any, the employer's contributions credited from the time the employer first or most recently became an employer, whichever date is later, and up to and including September 30 of the year the rate computation is made, plus any part of the employer's contributions due for that year paid on or before October 31 of such year, exceed the employer's benefits charged during the same period, by the employer's average annual taxable payroll for the sixteen-consecutive-calendar-quarter period ending September 30 of the year in which the rate computation is made. For an employer with less than sixteen consecutive calendar quarters of contribution experience, the employer's average taxable payroll shall be determined based upon the four-calendar-quarter periods for which contributions are payable.

(e) Each eligible experience rated employer shall be assigned to one of twenty rate categories with a corresponding experience factor as follows:

Category	Experience Factor
1	0.00

LABOR

2	0.25
3	0.40
4	0.45
5	0.50
6	0.60
7	0.65
8	0.70
9	0.80
10	0.90
11	0.95
12	1.00
13	1.05
14	1.10
15	1.20
16	1.35
17	1.55
18	1.80
19	2.15
20	2.60

Eligible experience rated employers shall be assigned to rate categories from highest to lowest according to their experience reserve ratio with category one being assigned to accounts with the highest reserve ratios and category twenty being assigned to accounts with the lowest reserve ratios. Each category shall be limited to no more than five percent of the state's total taxable payroll, except that:

(i) Any employer which has a portion of its taxable wages fall into one category and a portion into the next higher category shall be assigned to the lower category; and

(ii) No employer with a reserve ratio calculated to five decimal places equal to another employer similarly calculated shall be assigned to a higher rate than the employer to which it has the equal reserve ratio.

(f) The state's reserve ratio shall be calculated by dividing the amount available to pay benefits in the Unemployment Trust Fund and the State Unemployment Insurance Trust Fund as of September 30, 2005, and each September 30 thereafter, less any outstanding obligations and amounts appropriated therefrom by the state's total wages from the four calendar quarters ending on such September 30. For purposes of this section, total wages means all remuneration paid by an employer in employment. The state's reserve ratio shall be applied to the table in this subdivision to determine the yield factor for the upcoming rate year.

State's Reserve Ratio	Yield Factor
1.45 percent and above	= 0.70

1.30 percent up to but not including 1.45	=	0.75
1.15 percent up to but not including 1.30	=	0.80
1.00 percent up to but not including 1.15	=	0.90
0.85 percent up to but not including 1.00	=	1.00
0.70 percent up to but not including 0.85	=	1.10
0.60 percent up to but not including 0.70	=	1.20
0.50 percent up to but not including 0.60	=	1.25
0.45 percent up to but not including 0.50	=	1.30
0.40 percent up to but not including 0.45	=	1.35
0.35 percent up to but not including 0.40	=	1.40
0.30 percent up to but not including 0.35	=	1.45
Below 0.30 percent	=	1.50

Once the yield factor for the upcoming rate year has been determined, it is multiplied by the amount of unemployment benefits paid from combined tax during the four calendar quarters ending September 30 of the preceding year. The resulting figure is the planned yield for the rate year. The planned yield is divided by the total taxable wages for the four calendar quarters ending September 30 of the previous year and carried to four decimal places to create the average combined tax rate for the rate year.

(g) The average combined tax rate is assigned to rate category twelve as established in subdivision (4)(e) of this section. Rates for each of the remaining nineteen categories are determined by multiplying the average combined tax rate by the experience factor associated with each category and carried to four decimal places. Employers who are delinquent in filing their combined tax reports as of October 31 of any year shall be assigned to category twenty for the following calendar year unless the delinquency is corrected prior to December 31 of the year of rate calculation.

(h) As used in this subdivision (4) of this section, standard rate means the rate assigned to category twenty for that year. For calendar years 2006 and thereafter, the standard rate shall be not less than five and four-tenths percent of the employer's annual taxable payroll;

(5) Any employer may at any time make voluntary contributions up to the amount necessary to qualify for one rate category reduction, additional to the required contributions, to the fund to be credited to his or her account. Voluntary contributions received after March 10, 2005, for rate year 2005 or January 10 for rate year 2006 and thereafter shall not be used in rate calculations for the same calendar year;

(6) As used in sections 48-648 to 48-654, the term payroll means the total amount of wages during a calendar year, except as otherwise provided in section 48-654, by which the combined tax was measured; and

(7)(a) The state or any of its instrumentalities shall make payments in lieu of contributions in an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during each calendar quarter that is attributable to service in employment of the state or any of its instrumentalities. The commissioner after the end of each calendar

quarter shall notify any state instrumentality or other public employer of the amount of regular benefits and one-half the amount of extended benefits paid that are attributable to service in its employment and the instrumentality or public employer so notified shall reimburse the fund within thirty days after receipt of such notice. The commissioner may require that any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded five hundred thousand dollars to pay the reimbursement by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that payment of the reimbursement by an electronic method would work a hardship on the employer.

(b) After December 31, 1977, the state or any of its political subdivisions and any instrumentality of one or more of the foregoing or any other governmental entity for which services in employment as is provided by subdivision (4)(a) of section 48-604 are performed shall be required to pay contributions and after December 31, 1996, combined tax on wages paid for services rendered in its or their employment on the same basis as any other employer who is liable for the payment of combined tax under the Employment Security Law, unless the state or any political subdivision thereof and any instrumentality of one or more of the foregoing or any other governmental entity for which such services are performed files with the commissioner its written election not later than January 31, 1978, or if such employer becomes subject to this section after January 1, 1978, not later than thirty days after such subjectivity begins, to become liable to make payments in lieu of contributions in an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during each calendar quarter that is attributable to service in employment of such electing employer prior to December 31, 1978, and in an amount equal to the full amount of regular benefits plus the full amount of extended benefits paid during each calendar quarter that is attributable to service in employment of such electing employer after January 1, 1979. Eligible employers electing to make payments in lieu of contributions shall not be liable for state unemployment insurance tax payments. The commissioner, after the end of each calendar quarter, shall notify any such employer that has so elected of the amount of benefits for which it is liable to pay pursuant to its election that have been paid that are attributable to service in its employment and the employer so notified shall reimburse the fund within thirty days after receipt of such notice.

(c) Any employer which makes an election in accordance with subdivision (b) of this subdivision to become liable for payments in lieu of contributions shall continue to be liable for payments in lieu of contributions for all benefits paid based upon wages paid for service in employment of such employer while such election is effective and such election shall continue until such employer files with the commissioner, not later than December 1 of any calendar year, a written notice terminating its election as of December 31 of that year and thereafter such employer shall again be liable for the payment of contributions and for the reimbursement of such benefits as may be paid based upon wages paid for services in employment of such employer while such election was effective.

Source: Laws 1937, c. 108, § 7, p. 382; Laws 1939, c. 56, § 5, p. 239; Laws 1941, c. 94, § 5, p. 390; C.S.Supp., 1941, § 48-707; R.S. 1943, § 48-649; Laws 1947, c. 175, § 10, p. 577; Laws 1949, c. 163, § 12, p. 427; Laws 1953, c. 167, § 8, p. 533; Laws 1955, c. 190, § 9, p. 548; Laws 1972, LB 1392, § 8; Laws 1976, LB 819, § 2; Laws 1977, LB 509, § 7; Laws 1984, LB 249, § 1; Laws 1985, LB 339, § 34; Laws 1994, LB 1337, § 8; Laws 1995, LB 334, § 1; Laws 2005, LB 484, § 9; Laws 2005, LB 739, § 11; Laws 2007, LB 265, § 9.
Operative date July 1, 2007.

48-649.01 Repealed. Laws 2007, LB 265, § 39.

48-652 Employer's experience account; reimbursement account; contributions by employer; liability; termination; reinstatement. (1)(a) A separate experience account shall be established for each employer who is liable for payment of contributions. Whenever and wherever in the Employment Security Law the terms reserve account or experience account are used, unless the context clearly indicates otherwise, such terms shall be deemed interchangeable and synonymous and reference to either of such accounts shall refer to and also include the other.

(b) A separate reimbursement account shall be established for each employer who is liable for payments in lieu of contributions. All benefits paid with respect to service in employment for such employer shall be charged to his or her reimbursement account and such employer shall be billed for and shall be liable for the payment of the amount charged when billed by the commissioner. Payments in lieu of contributions received by the commissioner on behalf of each such employer shall be credited to such employer's reimbursement account, and two or more employers who are liable for payments in lieu of contributions may jointly apply to the commissioner for establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. The commissioner shall prescribe such rules and regulations as he or she deems necessary with respect to applications for establishment, maintenance, and termination of group accounts authorized by this subdivision.

(2) All contributions paid by an employer shall be credited to the experience account of such employer. State unemployment insurance tax payments shall not be credited to the experience account of each employer. Partial payments of combined tax shall be credited so that at least eighty percent of the combined tax payment excluding interest and penalty is credited first to contributions due. In addition to contributions credited to the experience account, each employer's account shall be credited as of June 30 of each calendar year with interest at a rate determined by the commissioner based on the average annual interest rate paid by the Secretary of the Treasury of the United States of America upon the state's account in the Unemployment Trust Fund for the preceding calendar year multiplied by the balance in his or her experience account at the beginning of such calendar year. If the total credits as of such date to all employers' experience accounts are equal to or greater than ninety percent of the total amount in the Unemployment Compensation Fund, no interest shall be credited for that year to any employer's account. Contributions with respect to prior years which are received on or before January 31 of any year shall be considered as having been paid at the beginning

of the calendar year. All voluntary contributions which are received on or before January 10 of any year shall be considered as having been paid at the beginning of the calendar year.

(3)(a) Each experience account shall be charged only for benefits based upon wages paid by such employer. No benefits shall be charged to the experience account of any employer if (i) such benefits were paid on the basis of a period of employment from which the claimant (A) left work voluntarily without good cause, (B) left work voluntarily due to a nonwork-connected illness or injury, (C) left work voluntarily with good cause to escape abuse as defined in section 42-903 between household members as provided in subdivision (1) of section 48-628.01, (D) left work from which he or she was discharged for misconduct connected with his or her work, or (E) left work voluntarily and is entitled to unemployment benefits without disqualification in accordance with subdivision (3) or (5) of section 48-628.01 and (ii) the employer has filed timely notice of the facts on which such exemption is claimed in accordance with rules and regulations prescribed by the commissioner. No benefits shall be charged to the experience account of any employer if such benefits were paid on the basis of wages paid in the base period that are wages for insured work solely by reason of subdivision (5)(b) of section 48-627.

(b) Each reimbursement account shall be charged only for benefits paid that were based upon wages paid by such employer in the base period that were wages for insured work solely by reason of subdivision (5) of section 48-627.

(c) Benefits paid to an eligible individual shall be charged against the account of his or her most recent employers within his or her base period against whose accounts the maximum charges hereunder have not previously been made in the inverse chronological order in which the employment of such individual occurred. The maximum amount so charged against the account of any employer, other than an employer for which services in employment as provided in subdivision (4)(a) of section 48-604 are performed, shall not exceed the total benefit amount to which such individual was entitled as set out in section 48-626 with respect to base period wages of such individual paid by such employer plus one-half the amount of extended benefits paid to such eligible individual with respect to base period wages of such individual paid by such employer. The commissioner shall by rules and regulations prescribe the manner in which benefits shall be charged against the account of several employers for whom an individual performed employment during the same quarter or during the same base period. Any benefit check duly issued and delivered or mailed to a claimant and not presented for payment within one year from the date of its issue may be invalidated and the amount thereof credited to the Unemployment Compensation Fund, except that a substitute check may be issued and charged to the fund on proper showing at any time within the year next following. Any charge made to an employer's account for any such invalidated check shall stand as originally made.

(4)(a) An employer's experience account shall be deemed to be terminated one calendar year after such employer has ceased to be subject to the Employment Security Law, except that if the commissioner finds that an employer's business is closed solely because of the entrance

of one or more of the owners, officers, partners, or limited liability company members or the majority stockholder into the armed forces of the United States, or of any of its allies, after July 1, 1950, such employer's account shall not be terminated and, if the business is resumed within two years after the discharge or release from active duty in the armed forces of such person or persons, the employer's experience account shall be deemed to have been continuous throughout such period.

(b) An experience account terminated pursuant to this subsection shall be reinstated if (i) the employer becomes subject again to the Employment Security Law within one calendar year after termination of such experience account and the employer makes a written application for reinstatement of such experience account to the commissioner within two calendar years after termination of such experience account and (ii) the commissioner finds that the employer is operating substantially the same business as prior to the termination of such experience account.

(5) All money in the Unemployment Compensation Fund shall be kept mingled and undivided. The payment of benefits to an individual shall in no case be denied or withheld because the experience account of any employer does not have a total of contributions paid in excess of benefits charged to such experience account.

(6) A contributory or reimbursable employer shall be relieved of charges if the employer was previously charged for wages and the same wages are being used a second time to establish a new claim as a result of the October 1, 1988, change in the base period.

Source: Laws 1937, c. 108, § 7, p. 383; Laws 1939, c. 56, § 5, p. 240; Laws 1941, c. 94, § 5, p. 392; C.S.Supp., 1941, § 48-707; R.S.1943, § 48-652; Laws 1947, c. 175, § 11, p. 579; Laws 1949, c. 163, § 13, p. 428; Laws 1953, c. 167, § 9, p. 534; Laws 1957, c. 208, § 5, p. 732; Laws 1971, LB 651, § 9; Laws 1977, LB 509, § 8; Laws 1980, LB 800, § 5; Laws 1984, LB 995, § 1; Laws 1985, LB 339, § 37; Laws 1986, LB 901, § 1; Laws 1987, LB 275, § 1; Laws 1988, LB 1033, § 3; Laws 1993, LB 121, § 292; Laws 1994, LB 884, § 65; Laws 1994, LB 1337, § 11; Laws 1995, LB 1, § 12; Laws 1995, LB 240, § 4; Laws 2000, LB 953, § 9; Laws 2001, LB 418, § 1; Laws 2005, LB 739, § 12; Laws 2007, LB265, § 10.
Operative date July 1, 2007.

48-663.01 Benefits; false statements by employee; forfeit; appeal; failure to repay overpayment of benefits; levy authorized; procedure; failure or refusal to honor levy; liability. (1) Notwithstanding any other provision of this section, or of section 48-627 or 48-663, an individual who willfully fails to disclose amounts earned during any week with respect to which benefits are claimed by him or her or who willfully fails to disclose or has falsified as to any fact which would have disqualified him or her or rendered him or her ineligible for benefits during such week, shall forfeit all or part of his or her benefit rights, as determined by a deputy, with respect to uncharged wage credits accrued prior to the date of such failure or to the date of such falsifications. An appeal may be taken from any such determination in the manner provided in section 48-634.

(2)(a) If any person liable to repay an overpayment of unemployment benefits resulting from a determination under subsection (1) of this section fails or refuses to repay such overpayment within twelve months after the date the overpayment determination becomes final, the commissioner may issue a levy on salary, wages, or other regular payments due

to or received by such person and such levy shall be continuous from the date the levy is served until the amount of the levy is satisfied. Notice of the levy shall be mailed to the person whose salary, wages, or other regular payment is levied upon at his or her last-known address not later than the date that the levy is served. Exemptions or limitations on the amount of salary, wages, or other regular payment that can be garnished or levied upon by a judgment creditor shall apply to levies made pursuant to this section. Appeal of a levy may be made in the manner provided in section 48-634, but such appeal shall not act as a stay of the levy.

(b) Any person upon whom a levy is served who fails or refuses to honor the levy without cause may be held liable for the amount of the levy up to the value of the assets of the person liable to repay the overpayment that are under the control of the person upon whom the levy is served at the time of service and thereafter.

Source: Laws 1949, c. 163, § 16(2), p. 432; Laws 2007, LB265, § 11.
Operative date July 1, 2007.

48-664 Benefits; false statements by employer; penalty; failure or refusal to make combined tax payment. Any employer, whether or not subject to the Employment Security Law, or any officer or agent of such an employer or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, to obtain benefits for an individual not entitled thereto, to avoid becoming or remaining subject to such law, or to avoid or reduce any contribution or other payment required from an employer under sections 48-648 and 48-649, or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required under the Employment Security Law or to produce or permit the inspection or copying of records as required under such law, shall be guilty of a Class III misdemeanor. Each such false statement or representation or failure to disclose a material fact and each day of such failure or refusal shall constitute a separate offense. An individual employer, partner, corporate officer, or member of a limited liability company or limited liability partnership who willfully fails or refuses to make any combined tax payment shall be jointly and severally liable for the payment of such combined tax and any penalties and interest owed thereon. When an unemployment benefit overpayment occurs, in whole or in part, as the result of a violation of this section by an employer, the amount of the overpayment recovered shall not be credited back to such employer's experience account.

Source: Laws 1937, c. 108, § 16, p. 400; C.S.Supp.,1941, § 48-715; R.S.1943, § 48-664; Laws 1953, c. 167, § 13, p. 539; Laws 1977, LB 40, § 295; Laws 1985, LB 339, § 45; Laws 2005, LB 484, § 12; Laws 2007, LB265, § 12.
Operative date July 1, 2007.

ARTICLE 7

BOILER INSPECTION

Section.

- 48-720. Terms, defined.
- 48-722. State boiler inspector; annual inspection; exception; contract with authorized inspection agency; certification.
- 48-730. Equipment; installation; notice to commissioner; reinspection.
- 48-731. Special inspector commission; requirements; inspection under provision of a city ordinance; inspection under the act not required; when; insurance coverage required.
- 48-736. Violation; penalty.

48-720 Terms, defined. As used in the Boiler Inspection Act, unless the context otherwise requires:

(1) Authorized inspection agency means an authorized inspection agency as defined in NB-369, National Board Qualifications and Duties for Authorized Inspection Agencies (AIAs) Performing Inservice Inspection Activities and Qualifications for Inspectors of Boilers and Pressure Vessels;

(2) Board means the Boiler Safety Code Advisory Board;

(3) Boiler means a closed vessel in which water or other liquid is heated, steam or vapor is generated, steam or vapor is superheated, or any combination thereof, under pressure or vacuum, for internal or external use to itself, by the direct application of heat and an unfired pressure vessel in which the pressure is obtained from an external source or by the application of heat from an indirect or direct source. Boiler includes a fired unit for heating or vaporizing liquids other than water only when such unit is separate from processing systems and complete within itself;

(4) Commissioner means the Commissioner of Labor; and

(5) Department means the Department of Labor.

Source: Laws 1987, LB 462, § 2; Laws 1988, LB 863, § 2; Laws 1997, LB 641, § 1; Laws 2007, LB226, § 1. Effective date May 17, 2007.

48-722 State boiler inspector; annual inspection; exception; contract with authorized inspection agency; certification. (1) Except as provided in subsection (3) of this section, the state boiler inspector shall inspect or cause to be inspected at least once every twelve months all boilers required to be inspected by the Boiler Inspection Act to determine whether the boilers are in a safe and satisfactory condition and properly constructed and maintained for the purpose for which the boiler is used, except that (a) hobby boilers, steam farm traction engines, portable and stationary show engines, and portable and stationary show boilers, which are not otherwise exempted from the act pursuant to section 48-726, shall be subject to inspection at least once every twenty-four months and (b) the commissioner may, by rule and regulation, establish inspection periods for pressure vessels of more than twelve months, but not to exceed the inspection period recommended

in the National Board Inspection Code or the American Petroleum Institute Pressure Vessel Inspection Code API-510 for pressure vessels being used for similar purposes. In order to ensure that inspections are performed in a timely manner, the department may contract with an authorized inspection agency to perform any inspection authorized under the Boiler Inspection Act. If the department contracts with an authorized inspection agency to perform inspections, such contract shall be in writing and shall contain an indemnification clause wherein the authorized inspection agency agrees to indemnify and defend the department for loss occasioned by negligent or tortious acts committed by special inspectors employed by such authorized inspection agency when performing inspections on behalf of the department.

(2) No boilers required to be inspected by the act shall be operated without valid and current certification pursuant to rules and regulations adopted and promulgated by the commissioner in accordance with the requirements of the Administrative Procedure Act. The owner of any boiler installed after September 2, 1973, shall file a manufacturer's data report covering the construction of such boiler with the state boiler inspector. Such reports shall be used to assist the state boiler inspector in the certification of boilers. No boiler required to be inspected by the Boiler Inspection Act shall be operated at any type of public gathering or show without first being inspected and certified as to its safety by the state boiler inspector or a special inspector commissioned pursuant to section 48-731. Antique engines with boilers may be brought into the state from other states without inspection, but inspection as provided in this section shall be made and the boiler certified as safe before being operated.

(3) The commissioner may, by rule and regulation, waive the inspection of unfired pressure vessels registered with the State of Nebraska if the commissioner finds that the owner or user of the unfired pressure vessel follows a safety inspection and repair program that is based upon nationally recognized standards.

Source: Laws 1943, c. 112, § 2(1), p. 392; R.S.1943, § 48-702; Laws 1961, c. 235, § 5, p. 698; Laws 1971, LB 886, § 1; Laws 1973, LB 481, § 1; R.S.1943, (1984), § 48-702; Laws 1987, LB 462, § 4; Laws 1995, LB 438, § 2; Laws 1997, LB 641, § 2; Laws 1998, LB 395, § 13; Laws 1999, LB 66, § 2; Laws 2007, LB226, § 2.
Effective date May 17, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

48-730 Equipment; installation; notice to commissioner; reinspection. Before any boiler required to be inspected by the Boiler Inspection Act is installed, a ten days' written notice of intention to install the boiler shall be given to the commissioner, except that the commissioner may, upon application and good cause shown, waive the ten-day prior notice requirement. The notice shall designate the proposed place of installation, the type and capacity of the boiler, the use to be made of the boiler, the name of the company which manufactured the boiler, and whether the boiler is new or used. A boiler moved from one location to another shall be reinspected prior to being placed back into use.

Source: Laws 1943, c. 112, § 5, p. 394; R.S.1943, (1984), § 48-710; Laws 1987, LB 462, § 12; Laws 1995, LB 438, § 9; Laws 1998, LB 395, § 16; Laws 2007, LB226, § 3.
Effective date May 17, 2007.

48-731 Special inspector commission; requirements; inspection under provision of a city ordinance; inspection under the act not required; when; insurance coverage required.

(1)(a) The commissioner may issue a special inspector commission to an inspector in the employ of a company if the inspector has previously passed the examination prescribed by the National Board of Boiler and Pressure Vessel Inspectors and the company is an insurance company authorized to insure boilers in this state against loss from explosion or is an authorized inspection agency.

(b) Each special inspector employed by an insurance company or authorized inspection agency who has been issued a special inspector commission under this section shall submit to the state boiler inspector complete data of each boiler required to be inspected by the Boiler Inspection Act which is insured or inspected by such insurance company or authorized inspection agency on forms approved by the commissioner.

(c) Insurance companies shall notify the department of new, canceled, or suspended risks relating to insured boilers. Insurance companies shall notify the department of all boilers which the company insures, or any boiler for which insurance has been canceled, not renewed, or suspended within thirty days after such action. Authorized inspection agencies shall notify the department of any new or canceled agreements relating to the inspection of boilers or pressure vessels within thirty days after such action.

(d) Insurance companies and authorized inspection agencies shall immediately notify the department of defective boilers. If a special inspector employed by an insurance company, upon the first inspection of new risk, finds that the boiler or any of the appurtenances are in such condition that the inspector's company refuses insurance, the company shall immediately submit a report of the defects to the state boiler inspector.

(2) The inspection required by the act shall not be required if (a) an annual inspection is made under a city ordinance which meets the standards set forth in the act, (b) a certificate of inspection of the boiler is filed with the commissioner with a certificate fee, and (c) the inspector for the city making such inspection is required by such ordinance to either hold a commission from the National Board of Boiler and Pressure Vessel Inspectors commensurate with the type of inspections performed by the inspector for the city or acquire the commission within twelve months after appointment.

(3) The commissioner may, by rule and regulation, provide for the issuance of a special inspector commission to an inspector in the employ of a company using or operating an unfired pressure vessel subject to the act for the limited purpose of inspecting unfired pressure vessels used or operated by such company.

(4) All inspections made by a special inspector shall be performed in accordance with the act, and a complete report of such inspection shall be filed with the department in the time, manner, and form prescribed by the commissioner.

(5) The state boiler inspector may, at his or her discretion, inspect any boiler to which a special inspector commission applies.

(6) The commissioner may, for cause, suspend or revoke any special inspector commission.

(7) No authorized inspection agency shall perform inspections of boilers in the State of Nebraska unless the authorized inspection agency has insurance coverage for professional errors and omissions and comprehensive and general liability under a policy or policies written by an insurance company authorized to do business in this state in effect at the time of such inspection. Such insurance policy or policies shall be in an amount not less than the minimum amount as established by the commissioner. Such minimum amount shall be established with due regard to the protection of the general public and the availability of insurance coverage, but such minimum insurance coverage shall not be less than one million dollars for professional errors and omissions and one million dollars for comprehensive and general liability.

Source: Laws 1943, c. 112, § 6(2), p. 394; R.S.1943, § 48-712; Laws 1947, c. 176, § 1, p. 584; Laws 1980, LB 959, § 2; R.S.1943, (1984), § 48-712; Laws 1987, LB 462, § 13; Laws 1995, LB 438, § 10; Laws 1998, LB 395, § 17; Laws 2007, LB226, § 4.
Effective date May 17, 2007.

48-736 Violation; penalty. Any person, persons, corporations, and the directors, managers, superintendents, and officers of such corporations violating the Boiler Inspection Act shall be guilty of a Class III misdemeanor.

Source: Laws 1943, c. 112, § 9, p. 396; R.S.1943, § 48-716; Laws 1977, LB 40, § 297; R.S.1943, (1984), § 48-716; Laws 1987, LB 462, § 18; Laws 2007, LB226, § 5.
Effective date May 17, 2007.

ARTICLE 8

COMMISSION OF INDUSTRIAL RELATIONS

Section.

- 48-801. Terms, defined.
- 48-804. Commissioners, appointment, term; vacancy; removal; presiding officer; selection; duties; quorum; applicability of law.
- 48-804.01. Presiding officer; clerk; personnel; appointment; duties.
- 48-805. Commissioners; qualifications.
- 48-806. Commissioner; compensation; expenses.
- 48-816.01. Hearing officer; appointment; when.
- 48-838. Collective bargaining; questions of representation; elections; nonmember employee duty to reimburse; when.

48-801 Terms, defined. As used in the Industrial Relations Act, unless the context otherwise requires:

(1) Person shall include an individual, partnership, limited liability company, association, corporation, business trust, or other organized group of persons;

(2) Governmental service shall mean all services performed under employment by the State of Nebraska, any political or governmental subdivision thereof, any municipal corporation, or any public power district or public power and irrigation district;

(3) Public utility shall include any individual, partnership, limited liability company, association, corporation, business trust, or other organized group of persons, any political or governmental subdivision of the State of Nebraska, any public corporation, or any public power district or public power and irrigation district, which carries on an intrastate business in this state and over which the government of the United States has not assumed exclusive regulation and control, that furnishes transportation for hire, telephone service, telegraph service, electric light, heat and power service, gas for heating or illuminating, whether natural or artificial, or water service, or any one or more thereof;

(4) Employer shall mean the State of Nebraska or any political or governmental subdivision of the State of Nebraska except the Nebraska National Guard or state militia. Employer shall also mean any municipal corporation, any public power district or public power and irrigation district, or any public utility;

(5) Employee shall include any person employed by any employer;

(6) Labor organization shall mean any organization of any kind or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work;

(7) Industrial dispute shall include any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, or refusal to discuss terms or conditions of employment;

(8) Commission shall mean the Commission of Industrial Relations;

(9) Commissioner shall mean a member of the commission; and

(10) Supervisor shall mean any employee having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not a merely routine or clerical nature, but requires the use of independent judgment.

Source: Laws 1947, c. 178, § 1, p. 586; Laws 1967, c. 303, § 1, p. 823; Laws 1967, c. 304, § 1, p. 826; Laws 1969, c. 407, § 1, p. 1405; Laws 1972, LB 1228, § 1; Laws 1985, LB 213, § 1; Laws 1986, LB 809, § 2; Laws 1993, LB 121, § 294; Laws 2007, LB472, § 1.
Effective date September 1, 2007.

48-804 Commissioners, appointment, term; vacancy; removal; presiding officer; selection; duties; quorum; applicability of law. (1) The Commission of Industrial Relations shall be composed of five commissioners appointed by the Governor, with the advice and consent of the Legislature. The commissioners shall be representative of the public. Each commissioner shall be appointed and hold office for a term of six years and until a

successor has qualified. In case of a vacancy, the Governor shall appoint a successor to fill the vacancy for the unexpired term.

(2) Any commissioner may be removed by the Governor for the same causes as a judge of the district court may be removed.

(3) The commissioners shall, on July 1 of every odd-numbered year by a majority vote, select one of their number as presiding officer for the next two years, who shall preside at all hearings by the commission en banc, and shall assign the work of the commission to the several commissioners and perform such other supervisory duties as the needs of the commission may require. A majority of the commissioners shall constitute a quorum to transact business. The act or decision of any three of the commissioners shall in all cases be deemed the act or decision of the commission.

(4) The commission shall not be subject to the Administrative Procedure Act.

Source: Laws 1947, c. 178, § 4, p. 588; Laws 1969, c. 407, § 2, p. 1407; Laws 1974, LB 819, § 1; Laws 1979, LB 444, § 2; Laws 2007, LB472, § 2.
Effective date September 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

48-804.01 Presiding officer; clerk; personnel; appointment; duties. The presiding officer of the commission shall, with the advice and consent of the Governor, appoint a clerk of such commission who shall hold office at the pleasure of the commission. The presiding officer shall in like manner appoint such other assistants and employees as he or she may deem necessary. The clerk shall, under the direction of the presiding officer, keep a full and true record of the proceedings of the commission and record all pleadings and other papers filed with the commission, and no other action shall be taken thereon until the same has been recorded. The clerk shall in like manner issue all necessary notices and writs, superintend the business of the commission, and perform such other duties as the commission may direct. All other assistants and employees of the commission shall perform such duties, pertaining to the affairs thereof, as the commission may direct. The clerk of the commission shall administratively determine, prior to a hearing on the question of representation, the validity of the employee authorizations for representation by an employee labor organization.

Source: Laws 1974, LB 819, § 3; Laws 2007, LB472, § 3.
Effective date September 1, 2007.

48-805 Commissioners; qualifications. The commissioners shall not be appointed because they are representatives of either capital or labor, but they shall be appointed because of their experience and knowledge in legal, financial, labor, and industrial matters.

Source: Laws 1947, c. 178, § 5, p. 589; Laws 2007, LB472, § 4.
Effective date September 1, 2007.

48-806 Commissioner; compensation; expenses. As soon as the same may be legally paid under the Constitution of Nebraska, the compensation of each commissioner shall be four hundred seventy-five dollars per day for each day's time actually engaged in the performance of the duties of his or her office. Each commissioner shall also be paid his or her necessary traveling expenses incurred while away from his or her place of residence upon business of the commission in accordance with sections 81-1174 to 81-1177.

Source: Laws 1947, c. 178, § 6, p. 599; Laws 1971, LB 822, § 1; Laws 1976, LB 710, § 1; Laws 1977, LB 302, § 1; Laws 1979, LB 444, § 3; Laws 1981, LB 188, § 1; Laws 1981, LB 204, § 83; Laws 1991, LB 856, § 1; Laws 2007, LB211, § 1; Laws 2007, LB472, § 5.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 211, section 1, with LB 472, section 5, to reflect all amendments.

Note: The changes made by LB 211 became effective May 31, 2007. The changes made by LB 472 became effective September 1, 2007.

48-816.01 Hearing officer; appointment; when. The presiding officer of the commission may, when he or she deems it necessary to expedite the determination of cases filed with the commission, appoint a hearing officer to hear evidence and make recommended findings and orders in any case or to make recommended determinations after a representation election has been ordered and during the course of such election. Any person appointed as a hearing officer shall be an attorney admitted to practice in Nebraska and shall be knowledgeable in the rules of civil procedure and evidence applicable to the district courts.

Source: Laws 1979, LB 444, § 6; Laws 2007, LB472, § 6.
Effective date September 1, 2007.

48-838 Collective bargaining; questions of representation; elections; nonmember employee duty to reimburse; when. (1) The commission shall determine questions of representation for purposes of collective bargaining for and on behalf of employees and shall make rules and regulations for the conduct of elections to determine the exclusive collective-bargaining agent for employees, except that in no event shall a contract between an employer and an exclusive collective-bargaining agent act as a bar for more than three years to any other party seeking to represent employees, nor shall any contract bar for more than three years a petition by employees seeking an election to revoke the authority of an agent to represent them. Except as provided in the State Employees Collective Bargaining Act, the commission shall certify the exclusive collective-bargaining agent for employees affected by the Industrial Relations Act following an election by secret ballot, which election shall be conducted according to rules and regulations established by the commission.

(2) The election shall be conducted by one member of the commission who shall be designated to act in such capacity by the presiding officer of the commission, or the commission may appoint the clerk of the district court of the county in which the principal office of the employer is located to conduct the election in accordance with the rules and regulations established by the commission. Except as provided in the State Employees Collective Bargaining Act, the commission shall also determine the appropriate unit for bargaining and for voting in the election, and in making such determination, the commission

shall consider established bargaining units and established policies of the employer. It shall be presumed, in the case of governmental subdivisions such as municipalities, counties, power districts, or utility districts with no previous history of collective bargaining, that units of employees of less than departmental size shall not be appropriate.

(3) Except as provided in the State Employees Collective Bargaining Act, the commission shall not order an election until it has determined that at least thirty percent of the employees in an appropriate unit have requested in writing that the commission hold such an election. Such request in writing by an employee may be in any form in which an employee specifically either requests an election or authorizes the employee organization to represent him or her in bargaining, or otherwise evidences a desire that an election be conducted. Such request of an employee shall not become a matter of public record. No election shall be ordered in one unit more than once a year.

(4) Except as provided in the State Employees Collective Bargaining Act, the commission shall only certify an exclusive collective-bargaining agent if a majority of the employees voting in the election vote for the agent. A certified exclusive collective-bargaining agent shall represent all employees in the appropriate unit with respect to wages, hours, and conditions of employment, except that such right of exclusive recognition shall not preclude any employee, regardless of whether or not he or she is a member of a labor organization, from bringing matters to the attention of his or her superior or other appropriate officials.

Any employee may choose his or her own representative in any grievance or legal action regardless of whether or not an exclusive collective-bargaining agent has been certified. If an employee who is not a member of the labor organization chooses to have legal representation from the labor organization in any grievance or legal action, such employee shall reimburse the labor organization for his or her pro rata share of the actual legal fees and court costs incurred by the labor organization in representing the employee in such grievance or legal action.

The certification of an exclusive collective-bargaining agent shall not preclude any employer from consulting with lawful religious, social, fraternal, or other similar associations on general matters affecting employees so long as such contracts do not assume the character of formal negotiations in regard to wages, hours, and conditions of employment. Such consultations shall not alter any collective-bargaining agreement which may be in effect.

Source: Laws 1972, LB 1228, § 4; Laws 1974, LB 819, § 10; Laws 1986, LB 809, § 10; Laws 1987, LB 661, § 30; Laws 2002, LB 29, § 1; Laws 2007, LB472, § 7.
Effective date September 1, 2007.

Cross Reference

State Employees Collective Bargaining Act, see section 81-1369.

ARTICLE 10

AGE DISCRIMINATION

Section.

- 48-1001. Act, how cited; discrimination in employment because of age; policy; declaration of purpose.
- 48-1002. Terms, defined.
- 48-1003. Limitation on prohibitions; practices not prevented or precluded.
- 48-1004. Unlawful employment practices; enumerated.
- 48-1005. Violations; penalty.
- 48-1006. Repealed. Laws 2007, LB 265, § 40.
- 48-1007. Equal Opportunity Commission; enforcement; powers.
- 48-1008. Alleged violation; aggrieved person; complaint; investigation; civil action, when; filing, effect; written change; limitation on action; respondent; file written response; commission; powers.
- 48-1009. Court; jurisdiction; relief.
- 48-1010. Suits against governmental bodies; authorized.

48-1001 Act, how cited; discrimination in employment because of age; policy; declaration of purpose. (1) Sections 48-1001 to 48-1010 shall be known and may be cited as the Age Discrimination in Employment Act.

(2)(a) The Legislature hereby finds that the practice of discriminating in employment against properly qualified persons because of their age is contrary to American principles of liberty and equality of opportunity, is incompatible with the Constitution, deprives the state of the fullest utilization of its capacities for production, and endangers the general welfare.

(b) Hiring bias against workers forty years or more of age deprives the state of its most important resource of experienced employees, adds to the number of persons receiving public assistance, and deprives older people of the dignity and status of self-support.

(c) The right to employment otherwise lawful without discrimination because of age, where the reasonable demands of the position do not require such an age distinction, is hereby recognized as and declared to be a right of all the people of the state which shall be protected as provided in the act.

(d) It is hereby declared to be the policy of the state to protect the right recognized and declared in subdivision (2)(c) of this section and to eliminate all such discrimination to the fullest extent permitted. The Age Discrimination in Employment Act shall be construed to effectuate such policy.

Source: Laws 1963, c. 281, § 1, p. 838; Laws 1972, LB 1357, § 1; Laws 2007, LB265, § 13.
Operative date September 1, 2007.

48-1002 Terms, defined. For purposes of the Age Discrimination in Employment Act:

(1) Person includes one or more individuals, partnerships, limited liability companies, associations, labor organizations, corporations, business trusts, legal representatives, or any organized group of persons;

(2) Employer means any person having in his or her employ twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year and includes the State of Nebraska, governmental agencies, and political subdivisions, regardless of the number of employees, any person acting for or in the interest of an employer, directly or indirectly, and any party whose business is financed in whole or in part under the Nebraska Investment Finance Authority Act, but such term does not include (a) the United States, (b) a corporation wholly owned by the government of the United States, or (c) an Indian tribe;

(3) Labor organization means any organization of employees which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms, or conditions of employment, or for other mutual aid or protection in connection with employment;

(4) Employee means an individual employed by any employer; and

(5) Employment agency means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person, but does not include an agency of the United States, except that such term does include the United States Employment Service and the system of state and local employment services receiving federal assistance.

Source: Laws 1963, c. 281, § 2, p. 839; Laws 1972, LB 1357, § 2; Laws 1973, LB 265, § 1; Laws 1977, LB 162, § 20; Laws 1983, LB 424, § 1; Laws 1983, LB 626, § 73; Laws 1993, LB 121, § 296; Laws 2007, LB265, § 14.
Operative date September 1, 2007.

Cross Reference

Nebraska Investment Finance Authority Act, see section 58-201.

48-1003 Limitation on prohibitions; practices not prevented or precluded. (1) The prohibitions of the Age Discrimination in Employment Act shall be limited to the employment of individuals who are forty years or more of age.

(2) Nothing contained in the act shall be construed as making it unlawful for an employer, employment agency, or labor organization (a) to take action otherwise prohibited under the act when age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or when the differentiation is based on reasonable factors other than age, such as physical conditions; or (b) to discharge or otherwise discipline an employee for good cause.

Source: Laws 1963, c. 281, § 3, p. 839; Laws 1972, LB 1357, § 3; Laws 1979, LB 161, § 2; Laws 1983, LB 424, § 2; Laws 2007, LB265, § 15.
Operative date September 1, 2007.

48-1004 Unlawful employment practices; enumerated. (1) It shall be an unlawful employment practice for an employer:

(a) To refuse to hire, to discharge, or otherwise to discriminate against any individual with respect to the employee's terms, conditions, or privileges of employment, otherwise lawful, because of such individual's age, when the reasonable demands of the position do not require such an age distinction; or

(b) To willfully utilize in the hiring or recruitment of individuals for employment otherwise lawful, any employment agency, placement service, training school or center, labor organization, or any other source which so discriminates against individuals because of their age.

(2) It shall be an unlawful employment practice for any labor organization to so discriminate against any individual or to limit, segregate, or classify its membership in any way which would deprive or tend to deprive an individual of otherwise lawful employment opportunities, or would limit such employment opportunities or otherwise adversely affect his or her status as an employee or would affect adversely his or her wages, hours, or employment.

(3) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment or otherwise to discriminate against any individual because of such individual's age or to classify or refer for employment any individual on the basis of his or her age.

(4) It shall be an unlawful employment practice for any employer, employment agency, or labor organization to discharge, expel, or otherwise discriminate against any person because he or she opposed any unlawful employment practice specified in the Age Discrimination in Employment Act or has filed a charge or suit, testified, participated, or assisted in any proceeding under the act.

Source: Laws 1963, c. 281, § 4, p. 840; Laws 1972, LB 1357, § 4; Laws 1977, LB 162, § 21; Laws 2007, LB265, § 16.
Operative date September 1, 2007.

48-1005 Violations; penalty. Any person who violates any provision of the Age Discrimination in Employment Act or who forcibly resists, opposes, impedes, intimidates, or interferes with the Equal Opportunity Commission or any of its duly authorized representatives while engaged in its, his, or her duties under the act shall be guilty of a Class III misdemeanor. No person shall be imprisoned under this section except for a second or subsequent conviction.

Source: Laws 1963, c. 281, § 5, p. 840; Laws 1972, LB 1357, § 8; Laws 1977, LB 40, § 300; Laws 2007, LB265, § 17.
Operative date September 1, 2007.

48-1006 Repealed. Laws 2007, LB 265, § 40.

48-1007 Equal Opportunity Commission; enforcement; powers. The Age Discrimination in Employment Act shall be administered by the Equal Opportunity Commission as established by section 48-1116. The commission shall have the power (1) to make delegations, to appoint such agents and employees and to pay for technical assistance, including legal assistance, on a fee-for-service basis, as it deems necessary to assist it in the

performance of its functions under the act, (2) to cooperate with other federal, state, and local agencies and to cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of the act, (3) to make investigations, to issue or cause to be served interrogatories, and to require keeping of records necessary or appropriate for the administration of the act, and (4) to bring civil action in its name in any court of competent jurisdiction against any person deemed to be violating the act to compel compliance with the act or to enjoin any such person from continuing any practice that is deemed to be in violation of the act. The commission may seek judicial enforcement through the office of the Attorney General to require the answering of interrogatories and to gain access to evidence or records relevant to the charge under investigation.

Source: Laws 1972, LB 1357, § 5; Laws 1977, LB 162, § 22; Laws 2007, LB265, § 18.
Operative date September 1, 2007.

48-1008 Alleged violation; aggrieved person; complaint; investigation; civil action, when; filing, effect; written change; limitation on action; respondent; file written response; commission; powers. (1) Any person aggrieved by a suspected violation of the Age Discrimination in Employment Act shall file with the Equal Opportunity Commission a formal complaint in such manner and form prescribed by the commission. The commission shall make an investigation and may initiate an action to enforce the rights of such employee under the provisions of the act. If the commission does not initiate an action within sixty days after receipt of a complaint, the person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of the act. Filing of an action by either the commission or the person aggrieved shall be a bar to the filing of the action by the other.

(2) A written charge alleging violation of the Age Discrimination in Employment Act shall be filed within three hundred days after the occurrence of the alleged unlawful employment practice, and notice of the charge, including a statement of the date, place, and circumstances of the alleged unlawful employment practice, shall be served upon the person against whom such charge is made within ten days thereafter.

(3) A respondent shall file with the commission a written response to the written charge of violation within thirty days after service upon the respondent. Failure to file a written response within thirty days, except for good cause shown, shall result in a mandatory reasonable cause finding against the respondent by the commission. Failure by any complainant to cooperate with the commission, its investigators, or its staff, except for good cause shown, shall result in dismissal of the complaint by the commission.

(4) In connection with any investigation of a charge filed under this section, the commission or its authorized agents may, at any time after a charge is filed, issue or cause to be served interrogatories and shall have at all reasonable times access to, for the purposes of examination, and the right to copy any evidence or records of any person being investigated

or proceeded against that relate to unlawful employment practices covered by the act and are relevant to the charge under investigation. The commission may seek preparation of and judicial enforcement of any legal process or interrogatories through the office of the Attorney General.

Source: Laws 1972, LB 1357, § 6; Laws 1977, LB 162, § 23; Laws 1983, LB 424, § 3; Laws 2007, LB265, § 19.
Operative date September 1, 2007.

48-1009 Court; jurisdiction; relief. In any action brought to enforce the Age Discrimination in Employment Act, the court shall have jurisdiction to grant such legal or equitable relief as the court deems appropriate to effectuate the purposes of the act, including judgments compelling employment, reinstatement, or promotion, or enforcing liability for amounts deemed to be unpaid minimum wages or unpaid overtime compensation.

Source: Laws 1972, LB 1357, § 7; Laws 2007, LB265, § 20.
Operative date September 1, 2007.

48-1010 Suits against governmental bodies; authorized. The state, governmental agencies, and political subdivisions may be sued upon claims arising under the Age Discrimination in Employment Act in the same manner as provided by such act for suits against other employers.

Source: Laws 1983, LB 424, § 4; Laws 2007, LB265, § 21.
Operative date September 1, 2007.

ARTICLE 12

WAGES

(a) MINIMUM WAGES

Section.

48-1203. Wages; minimum rate.

48-1203.01. Training wage; rate; limitations.

(c) WAGE PAYMENT AND COLLECTION

48-1228. Act, how cited.

48-1229. Terms, defined.

48-1230. Employer; regular paydays; altered; notice; deduct, withhold, or divert portion of wages; when; unpaid wages; when due.

48-1230.01. Employer; unpaid wages constituting commissions; duties.

48-1232. Employee; claim; judgment; additional recovery from employer; when.

(a) MINIMUM WAGES

48-1203 Wages; minimum rate. (1) Except as otherwise provided in this section and section 48-1203.01, every employer shall pay to each of his or her employees a minimum wage of:

- (a) Five dollars and fifteen cents per hour through July 23, 2007;
 - (b) Five dollars and eighty-five cents per hour on and after July 24, 2007, through July 23, 2008;
 - (c) Six dollars and fifty-five cents per hour on and after July 24, 2008, through July 23, 2009; and
 - (d) Seven dollars and twenty-five cents per hour on and after July 24, 2009.
- (2) For persons compensated by way of gratuities such as waitresses, waiters, hotel bellhops, porters, and shoeshine persons, the employer shall pay wages at the minimum rate of two dollars and thirteen cents per hour, plus all gratuities given to them for services rendered. The sum of wages and gratuities received by each person compensated by way of gratuities shall equal or exceed the minimum wage rate provided in subsection (1) of this section. In determining whether or not the individual is compensated by way of gratuities, the burden of proof shall be upon the employer.
- (3) Any employer employing student-learners as part of a bona fide vocational training program shall pay such student-learners' wages at a rate of at least seventy-five percent of the minimum wage rate which would otherwise be applicable.

Source: Laws 1967, c. 285, § 3, p. 775; Laws 1969, c. 408, § 2, p. 1413; Laws 1973, LB 343, § 2; Laws 1987, LB 474, § 1; Laws 1989, LB 412, § 1; Laws 1991, LB 297, § 2; Laws 1997, LB 569, § 1; Laws 2007, LB265, § 22.
Operative date June 1, 2007.

48-1203.01 Training wage; rate; limitations. An employer may pay a new employee who is younger than twenty years of age and is not a seasonal or migrant worker a training wage of at least seventy-five percent of the federal minimum wage for ninety days from the date the new employee was hired. An employer may pay such new employee the training wage rate for an additional ninety-day period while the new employee is participating in on-the-job training which (1) requires technical, personal, or other skills which are necessary for his or her employment and (2) is approved by the Commissioner of Labor. No more than one-fourth of the total hours paid by the employer shall be at the training wage rate.

An employer shall not pay the training wage rate if the hours of any other employee are reduced or if any other employee is laid off and the hours or position to be filled by the new employee is substantially similar to the hours or position of such other employee. An employer shall not dismiss or reduce the hours of any employee with the intention of replacing such employee or his or her hours with a new employee receiving the training wage rate.

Source: Laws 1991, LB 297, § 3; Laws 1997, LB 569, § 2; Laws 2007, LB265, § 23.
Operative date June 1, 2007.

(c) WAGE PAYMENT AND COLLECTION

48-1228 Act, how cited. Sections 48-1228 to 48-1232 shall be known and may be cited as the Nebraska Wage Payment and Collection Act.

Source: Laws 1977, LB 220A, § 1; Laws 2007, LB255, § 1.
Effective date April 3, 2007.

48-1229 Terms, defined. For purposes of the Nebraska Wage Payment and Collection Act, unless the context otherwise requires:

(1) Employer means the state or any individual, partnership, limited liability company, association, joint-stock company, trust, corporation, political subdivision, or personal representative of the estate of a deceased individual, or the receiver, trustee, or successor thereof, within or without the state, employing any person within the state as an employee;

(2) Employee means any individual permitted to work by an employer pursuant to an employment relationship or who has contracted to sell the goods or services of an employer and to be compensated by commission. Services performed by an individual for an employer shall be deemed to be employment, unless it is shown that (a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact, (b) such service is either outside the usual course of business for which such service is performed or such service is performed outside of all the places of business of the enterprise for which such service is performed, and (c) such individual is customarily engaged in an independently established trade, occupation, profession, or business. This subdivision is not intended to be a codification of the common law and shall be considered complete as written;

(3) Fringe benefits includes sick and vacation leave plans, disability income protection plans, retirement, pension, or profit-sharing plans, health and accident benefit plans, and any other employee benefit plans or benefit programs regardless of whether the employee participates in such plans or programs; and

(4) Wages means compensation for labor or services rendered by an employee, including fringe benefits, when previously agreed to and conditions stipulated have been met by the employee, whether the amount is determined on a time, task, fee, commission, or other basis. Paid leave, other than earned but unused vacation leave, provided as a fringe benefit by the employer shall not be included in the wages due and payable at the time of separation, unless the employer and the employee or the employer and the collective-bargaining representative have specifically agreed otherwise. Unless the employer and employee have specifically agreed otherwise through a contract effective at the commencement of employment or at least ninety days prior to separation, whichever is later, wages includes commissions on all orders delivered and all orders on file with the employer at the time of separation of employment less any orders returned or canceled at the time suit is filed.

Source: Laws 1977, LB 220A, § 2; Laws 1988, LB 1130, § 1; Laws 1989, LB 238, § 1; Laws 1991, LB 311, § 1; Laws 1993, LB 121, § 300; Laws 1999, LB 753, § 1; Laws 2007, LB255, § 2.
Effective date April 3, 2007.

48-1230 Employer; regular paydays; altered; notice; deduct, withhold, or divert portion of wages; when; unpaid wages; when due. (1) Except as otherwise provided in this section, each employer shall pay all wages due its employees on regular days designated

by the employer or agreed upon by the employer and employee. Thirty days' written notice shall be given to an employee before regular paydays are altered by an employer. An employer may deduct, withhold, or divert a portion of an employee's wages only when the employer is required to or may do so by state or federal law or by order of a court of competent jurisdiction or the employer has written agreement with the employee to deduct, withhold, or divert.

(2) Except as otherwise provided in section 48-1230.01:

(a) Whenever an employer, other than a political subdivision, separates an employee from the payroll, the unpaid wages shall become due on the next regular payday or within two weeks of the date of termination, whichever is sooner; and

(b) Whenever a political subdivision separates an employee from the payroll, the unpaid wages shall become due within two weeks of the next regularly scheduled meeting of the governing body of the political subdivision if such employee is separated from the payroll at least one week prior to such meeting, or if an employee of a political subdivision is separated from the payroll less than one week prior to the next regularly scheduled meeting of the governing body of the political subdivision, the unpaid wages shall be due within two weeks of the following regularly scheduled meeting of the governing body of the political subdivision.

Source: Laws 1977, LB 220A, § 3; Laws 1988, LB 1130, § 2; Laws 2007, LB255, § 3.
Effective date April 3, 2007.

48-1230.01 Employer; unpaid wages constituting commissions; duties. Whenever an employer separates an employee from the payroll, the unpaid wages constituting commissions shall become due on the next regular payday following the employer's receipt of payment for the goods or services from the customer from which the commission was generated. The employer shall provide an employee with a periodic accounting of outstanding commissions until all commissions have been paid or the orders have been returned or canceled by the customer.

Source: Laws 2007, LB255, § 4.
Effective date April 3, 2007.

48-1232 Employee; claim; judgment; additional recovery from employer; when. If an employee establishes a claim and secures judgment on such claim under section 48-1231: (1) An amount equal to the judgment may be recovered from the employer; or (2) if the nonpayment of wages is found to be willful, an amount equal to two times the amount of unpaid wages shall be recovered from the employer. Any amount recovered pursuant to subdivision (1) or (2) of this section shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1977, LB 220A, § 5; Laws 1989, LB 238, § 2; Laws 1990, LB 1178, § 1; Laws 2007, LB255, § 5.
Effective date April 3, 2007.

ARTICLE 18

NEBRASKA AMUSEMENT RIDE ACT

Section.

48-1809. Permit fees.

48-1810. Repealed. Laws 2007, LB 265, § 38.

48-1809 Permit fees. The commissioner shall establish by rules and regulations a schedule of permit fees not to exceed fifty dollars for each amusement ride. Such permit fees shall be established with due regard for the costs of administering the Nebraska Amusement Ride Act and shall be remitted to the State Treasurer for credit to the Mechanical Safety Inspection Fund.

Source: Laws 1987, LB 226, § 9; Laws 2007, LB265, § 25.
Operative date January 1, 2008.

48-1810 Repealed. Laws 2007, LB 265, § 38.
Operative date January 1, 2008.

ARTICLE 19

DRUG AND ALCOHOL TESTING

Section.

48-1902. Terms, defined.

48-1902 Terms, defined. For purposes of sections 48-1901 to 48-1910, unless the context otherwise requires:

(1) Alcohol shall mean any product of distillation of any fermented liquid, whether rectified or diluted, whatever may be the origin thereof, synthetic ethyl alcohol, the four varieties of liquor defined in subdivisions (1) through (4) of section 53-103, alcohol, spirits, wine, and beer, every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer, and alcohol used in the manufacture of denatured alcohol, flavoring extracts, syrups, or medicinal, mechanical, scientific, culinary, and toilet preparations;

(2) Breath-testing device shall mean intoxilyzer model 4011AS or other scientific testing equivalent as approved by and operated in accordance with the department rules and regulations;

(3) Breath-testing-device operator shall mean a person who has obtained or been issued a permit pursuant to the department rules and regulations;

(4) Department shall mean the Department of Health and Human Services;

(5) Department rules and regulations shall mean the techniques and methods authorized pursuant to section 60-6,201;

(6) Drug shall mean any substance, chemical, or compound as described, defined, or delineated in sections 28-405 and 28-419 or any metabolite or conjugated form thereof, except

that any substance, chemical, or compound containing any product as defined in subdivision (1) of this section may also be defined as alcohol;

(7) Employee shall mean any person who receives any remuneration, commission, bonus, or other form of wages in return for such person's actions which directly or indirectly benefit an employer; and

(8) Employer shall mean the State of Nebraska and its political subdivisions, all other governmental entities, or any individual, association, corporation, or other organization doing business in the State of Nebraska unless it, he, or she employs a total of less than six full-time and part-time employees at any one time.

Source: Laws 1988, LB 582, § 2; Laws 1993, LB 370, § 44; Laws 1994, LB 859, § 1; Laws 1996, LB 1044, § 276; Laws 2007, LB296, § 218.
Operative date July 1, 2007.

ARTICLE 23

NEW HIRE REPORTING ACT

Section.

48-2305. Multistate employer; transmission of reports.

48-2306. Employer; fine.

48-2307. Department; report.

48-2305 Multistate employer; transmission of reports. An employer that has employees who are employed in two or more states and that transmits reports magnetically or electronically may comply with the New Hire Reporting Act by designating one of such states in which the employer has employees as the state to which the employer will transmit the report described in section 48-2303. Any Nebraska employer that transmits reports pursuant to this section shall notify the department in writing of the state which such employer designates for the purpose of transmitting reports.

Source: Laws 1997, LB 752, § 44; Laws 2007, LB296, § 219.
Operative date July 1, 2007.

48-2306 Employer; fine. On and after October 1, 1998, the department may levy a fine not to exceed twenty-five dollars for each employee not reported by the employer to the department. The department shall determine whether or not to levy a fine based upon the good faith efforts of an employer to comply with the New Hire Reporting Act. The department shall remit fines collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1997, LB 752, § 45; Laws 2007, LB296, § 220.
Operative date July 1, 2007.

48-2307 Department; report. The department shall issue a report to the Legislature on or before January 31 of each year which discloses the number of employees reported to the department and the number of matches during the preceding calendar year for purposes of the New Hire Reporting Act.

Source: Laws 1997, LB 752, § 46; Laws 2007, LB296, § 221.
Operative date July 1, 2007.

ARTICLE 25

CONVEYANCE SAFETY ACT

Section.

- 48-2501. Act, how cited.
- 48-2503. Conveyance Advisory Committee; created; members; terms; expenses; meetings.
- 48-2505. Repealed. Laws 2007, LB 265, § 38.
- 48-2506. Commissioner; establish fee schedules; administer act.
- 48-2507. Applicability of act.
- 48-2508. Exemptions from act.
- 48-2512. Existing conveyance; prohibited acts; licensed elevator mechanic; licensed elevator contractor; when required; new conveyance installation; requirements.
- 48-2512.01. State elevator inspector; qualifications; deputy inspectors; appointment; qualifications.

48-2501 Act, how cited. Sections 48-2501 to 48-2533 shall be known and may be cited as the Conveyance Safety Act.

Source: Laws 2006, LB 489, § 1; Laws 2007, LB265, § 26.
Operative date January 1, 2008.

48-2503 Conveyance Advisory Committee; created; members; terms; expenses; meetings. (1) The Conveyance Advisory Committee is created. One member shall be the state elevator inspector appointed pursuant to section 48-2512.01. One member shall be the State Fire Marshal or his or her designee. The Governor shall appoint the remaining members of the committee as follows: One representative from a major elevator manufacturing company; one representative from an elevator servicing company; one representative who is a building manager; one representative who is an elevator mechanic; and one representative of the general public from each county that has a population of more than one hundred thousand inhabitants. The committee shall be appointed within ninety days after January 1, 2008.

(2) The members of the committee appointed by the Governor shall serve for terms of three years, except that of the initial members appointed, two shall serve for terms of one year and three shall serve for terms of two years. The state elevator inspector and the State Fire Marshal or his or her designee shall serve continuously. The appointed members shall be reimbursed for their actual and necessary expenses for service on the committee as provided in sections 81-1174 to 81-1177. The members of the committee shall elect a chairperson who shall be the deciding vote in the event of a tie vote.

(3) The committee shall meet and organize within thirty days after the appointment of the members. The committee shall meet quarterly at a time and place to be fixed by the committee for the consideration of code regulations and for the transaction of such other business as properly comes before it. Special meetings may be called by the chairperson or at the request of two or more members of the committee. Any appointed committee member absent from three consecutive meetings shall be dismissed.

Source: Laws 2006, LB 489, § 3; Laws 2007, LB265, § 28.
Operative date January 1, 2008.

48-2505 Repealed. Laws 2007, LB 265, § 38.
Operative date January 1, 2008.

48-2506 Commissioner; establish fee schedules; administer act. (1) The commissioner shall, after a public hearing conducted by the commissioner or his or her designee, establish a reasonable schedule of fees for licenses, permits, certificates, and inspections authorized under the Conveyance Safety Act. The commissioner shall establish the fees at a level necessary to meet the costs of administering the act. Inspection fee schedules relating to the inspection of conveyances adopted by the commissioner prior to January 1, 2008, shall continue to be effective until they are amended or repealed by the commissioner.

(2) The commissioner shall administer the Conveyance Safety Act. It is the intent of the Legislature that, beginning in fiscal year 2008-09, the funding for the administration of the act shall be entirely from cash funds remitted to the Mechanical Safety Inspection Fund that are fees collected in the administration of the act.

Source: Laws 2006, LB 489, § 6; Laws 2007, LB265, § 29.
Operative date January 1, 2008.

Cross Reference

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

48-2507 Applicability of act. (1) The Conveyance Safety Act applies to the construction, operation, inspection, testing, maintenance, alteration, and repair of conveyances. Conveyances include the following equipment, associated parts, and hoistways which are not exempted under section 48-2508:

(a) Hoisting and lowering mechanisms equipped with a car which moves between two or more landings. This equipment includes elevators;

(b) Power driven stairways and walkways for carrying persons between landings. This equipment includes:

(i) Escalators; and

(ii) Moving sidewalks; and

(c) Hoisting and lowering mechanisms equipped with a car, which serves two or more landings and is restricted to the carrying of material by its limited size or limited access to the car. This equipment includes:

- (i) Dumbwaiters;
- (ii) Material lifts and dumbwaiters with automatic transfer devices; and
- (iii) Conveyors and related equipment within the scope of American Society of Mechanical Engineers B20.1.

(2) The act applies to the construction, operation, inspection, maintenance, alteration, and repair of automatic guided transit vehicles on guideways with an exclusive right-of-way. This equipment includes automated people movers.

(3) The act applies to conveyances in private residences located in counties that have a population of more than one hundred thousand inhabitants at the time of installation. Such conveyances are subject to inspection at installation but are not subject to periodic inspections.

Source: Laws 2006, LB 489, § 7; Laws 2007, LB265, § 30.
Operative date January 1, 2008.

48-2508 Exemptions from act. The Conveyance Safety Act does not apply to:

- (1) Conveyances under the jurisdiction and subject to inspection by the United States Government;
- (2) Conveyances used exclusively for agricultural purposes;
- (3) Personnel hoists within the scope of American National Standards Institute A10.4;
- (4) Material hoists within the scope of American National Standards Institute A10.5;
- (5) Manlifts within the scope of American Society of Mechanical Engineers A90.1;
- (6) Mobile scaffolds, towers, and platforms within the scope of American National Standards Institute A92;
- (7) Powered platforms and equipment for exterior and interior maintenance within the scope of American National Standards Institute 120.1;
- (8) Cranes, derricks, hoists, hooks, jacks, and slings within the scope of American Society of Mechanical Engineers B30;
- (9) Industrial trucks within the scope of American Society of Mechanical Engineers B56;
- (10) Portable equipment, except for portable escalators which are covered by American National Standards Institute A17.1;
- (11) Tiering or piling machines used to move materials to and from storage located and operating entirely within one story;
- (12) Equipment for feeding or positioning materials at machine tools, printing presses, and similar equipment;
- (13) Skip or furnace hoists;
- (14) Wharf ramps;
- (15) Railroad car lifts or dumpers;
- (16) Line jacks, false cars, shafters, moving platforms, and similar equipment used for installing a conveyance by an elevator contractor;
- (17) Manlifts, hoists, or conveyances used in grain elevators or feed mills;
- (18) Dock levelators;
- (19) Stairway chair lifts and platform lifts; and

(20) Conveyances in residences located in counties that have a population of one hundred thousand or less inhabitants.

Source: Laws 2006, LB 489, § 8; Laws 2007, LB265, § 31.
Operative date January 1, 2008.

48-2512 Existing conveyance; prohibited acts; licensed elevator mechanic; licensed elevator contractor; when required; new conveyance installation; requirements. (1)

No person shall wire, alter, replace, remove, or dismantle an existing conveyance contained within a building or structure located in a county that has a population of more than one hundred thousand inhabitants unless such person is a licensed elevator mechanic or he or she is working under the direct supervision of a person who is a licensed elevator mechanic. Neither a licensed elevator mechanic nor a licensed elevator contractor is required to perform nonmechanical maintenance of a conveyance. Neither a licensed elevator contractor nor a licensed elevator mechanic is required for removing or dismantling conveyances which are destroyed as a result of a complete demolition of a secured building.

(2) It shall be the responsibility of licensed elevator mechanics and licensed elevator contractors to ensure that installation and service of a conveyance is performed in compliance with applicable fire and safety codes. It shall be the responsibility of the owner of the conveyance to ensure that the conveyance is maintained in compliance with applicable fire and safety codes.

(3) All new conveyance installations shall be performed by a licensed elevator mechanic under the control of a licensed elevator contractor or by a licensed elevator contractor. Subsequent to installation, a licensed elevator contractor shall certify compliance with the Conveyance Safety Act.

Source: Laws 2006, LB 489, § 12; Laws 2007, LB265, § 32.
Operative date January 1, 2008.

48-2512.01 State elevator inspector; qualifications; deputy inspectors; appointment; qualifications. (1) The Commissioner of Labor shall appoint a state elevator inspector, subject to the approval of the Governor, who shall work under the direct supervision of the commissioner. The state elevator inspector serving on January 1, 2008, shall continue to serve unless removed by the commissioner.

(2) The person so appointed shall be qualified by (a) not less than five years' experience in the installation, maintenance, and repair of elevators as determined by the commissioner, (b) certification as a qualified elevator inspector by an association accredited by the American Society of Mechanical Engineers, or (c) not less than five years' journeyman experience in elevator installation, maintenance, and inspection as determined by the Commissioner of Labor and shall be familiar with the inspection process and rules and regulations adopted and promulgated under the Conveyance Safety Act.

(3) The commissioner, subject to the approval of the Governor, may appoint deputy inspectors possessing the same qualifications as the state elevator inspector. A qualified

individual may apply for the position of inspector or deputy inspector. The application shall include the applicant's social security number, but such social security number shall not be a public record.

Source: Laws 1919, c. 190, tit. IV, art. IV, § 14, p. 561; C.S.1922, § 7695; C.S.1929, § 48-414; R.S.1943, § 48-418; Laws 1965, c. 283, § 1, p. 810; Laws 1967, c. 297, § 1, p. 810; Laws 1973, LB 320, § 1; Laws 1982, LB 659, § 2; Laws 1987, LB 36, § 1; Laws 1997, LB 752, § 126; Laws 2006, LB 489, § 35; R.S.Supp.,2006, § 48-418; Laws 2007, LB265, § 27.
Operative date January 1, 2008.

Cross Reference

Conveyance Safety Act, see section 48-2501.

CHAPTER 49

LAW

Article.

5. Publication and Distribution of Session Laws and Journals. 49-506.
6. Printing and Distribution of Statutes. 49-617.
8. Definitions, Construction, and Citation. 49-801.01.
14. Nebraska Political Accountability and Disclosure Act.
 - (a) General Provisions. 49-1401.
 - (b) Campaign Practices. 49-1449 to 49-1479.02.
 - (c) Lobbying Practices. 49-1483.03.
 - (e) Nebraska Accountability and Disclosure Commission. 49-14,123 to 49-14,140.

ARTICLE 5

PUBLICATION AND DISTRIBUTION OF SESSION LAWS AND JOURNALS

Section.

49-506. Distribution by Secretary of State.

49-506 Distribution by Secretary of State. After the Secretary of State has made the distribution provided by section 49-503, he or she shall deliver additional copies of the session laws and the journal of the Legislature pursuant to this section in print or electronic format as he or she determines, upon recommendation by the Clerk of the Legislature and approval of the Executive Board of the Legislative Council.

One copy of the session laws shall be delivered to the Lieutenant Governor, the State Treasurer, the Auditor of Public Accounts, the Reporter of the Supreme Court and Court of Appeals, the State Court Administrator, the State Fire Marshal, the Department of Administrative Services, the Department of Aeronautics, the Department of Agriculture, the Department of Banking and Finance, the State Department of Education, the Department of Environmental Quality, the Department of Insurance, the Department of Labor, the Department of Motor Vehicles, the Department of Revenue, the Department of Roads, the Department of Veterans' Affairs, the Department of Natural Resources, the Military Department, the Nebraska State Patrol, the Nebraska Commission on Law Enforcement and Criminal Justice, each of the Nebraska state colleges, the Game and Parks Commission, the Nebraska Library Commission, the Nebraska Liquor Control Commission, the Nebraska Accountability and Disclosure Commission, the Public Service Commission, the State Real Estate Commission, the Nebraska State Historical Society, the Public Employees Retirement Board, the Risk Manager, the Legislative Fiscal Analyst, the Public Counsel, the materiel division of the Department of Administrative Services, the State Records Administrator, the budget division of the Department of Administrative Services, the Tax Equalization and Review Commission, the inmate library at all state penal and correctional institutions, the

Commission on Public Advocacy, and the Library of Congress; two copies to the Governor, the Secretary of State, the Nebraska Workers' Compensation Court, the Commission of Industrial Relations, and the Coordinating Commission for Postsecondary Education, one of which shall be for use by the community colleges; three copies to the Department of Health and Human Services; four copies to the Nebraska Publications Clearinghouse; five copies to the Attorney General; nine copies to the Revisor of Statutes; sixteen copies to the Supreme Court and the Legislative Council; and thirty-five copies to the University of Nebraska College of Law.

One copy of the journal of the Legislature shall be delivered to the Governor, the Lieutenant Governor, the State Treasurer, the Auditor of Public Accounts, the Reporter of the Supreme Court and Court of Appeals, the State Court Administrator, the Nebraska State Historical Society, the Legislative Fiscal Analyst, the Tax Equalization and Review Commission, the Commission on Public Advocacy, and the Library of Congress; two copies to the Secretary of State, the Commission of Industrial Relations, and the Nebraska Workers' Compensation Court; four copies to the Nebraska Publications Clearinghouse; five copies to the Attorney General and the Revisor of Statutes; eight copies to the Clerk of the Legislature; thirteen copies to the Supreme Court and the Legislative Council; and thirty-five copies to the University of Nebraska College of Law. The remaining copies shall be delivered to the State Librarian who shall use the same, so far as required for exchange purposes, in building up the State Library and in the manner specified in sections 49-507 to 49-509.

Source: Laws 1907, c. 78, § 6, p. 290; R.S.1913, § 3738; C.S.1922, § 3131; C.S.1929, § 49-506; R.S.1943, § 49-506; Laws 1947, c. 185, § 4, p. 611; Laws 1961, c. 243, § 2, p. 725; Laws 1969, c. 413, § 1, p. 1419; Laws 1972, LB 1284, § 17; Laws 1987, LB 572, § 2; Laws 1991, LB 663, § 34; Laws 1991, LB 732, § 117; Laws 1993, LB 3, § 34; Laws 1995, LB 271, § 6; Laws 1996, LB 906, § 1; Laws 1996, LB 1044, § 277; Laws 1999, LB 36, § 3; Laws 2000, LB 534, § 3; Laws 2000, LB 900, § 240; Laws 2000, LB 1085, § 2; Laws 2007, LB296, § 222; Laws 2007, LB334, § 6.
Operative date July 1, 2007.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 222, with LB 334, section 6, to reflect all amendments.

ARTICLE 6

PRINTING AND DISTRIBUTION OF STATUTES

Section.

49-617. Printing of statutes; distribution of copies.

49-617 Printing of statutes; distribution of copies. The Revisor of Statutes shall cause the statutes to be printed. The printer shall deliver all completed copies to the Supreme Court. These copies shall be held and disposed of by the court as follows: Sixty copies to the State Library to exchange for statutes of other states; five copies to the State Library to keep for daily use; not to exceed twenty-five copies to the Legislative Council for bill drafting and related services to the Legislature and executive state officers; as many copies

to the Attorney General as he or she has attorneys on his or her staff; as many copies to the Commission on Public Advocacy as it has attorneys on its staff; up to sixteen copies to the State Court Administrator; thirteen copies to the Tax Commissioner; eight copies to the Nebraska Publications Clearinghouse; six copies to the Public Service Commission; four copies to the Secretary of State; four copies to the Tax Equalization and Review Commission; four copies to the Clerk of the Legislature for use in his or her office and three copies to be maintained in the legislative chamber, one copy on each side of the chamber and one copy at the desk of the Clerk of the Legislature, under control of the sergeant at arms; three copies to the Auditor of Public Accounts; three copies to the Department of Health and Human Services; two copies each to the Governor of the state, the Chief Justice and each judge of the Supreme Court, each judge of the Court of Appeals, the Clerk of the Supreme Court, the Reporter of the Supreme Court and Court of Appeals, the Commissioner of Labor, and the Revisor of Statutes; one copy each to the Secretary of State of the United States, each Indian tribal court located in the State of Nebraska, the library of the Supreme Court of the United States, the Adjutant General, the Air National Guard, the Commissioner of Education, the State Treasurer, the Board of Educational Lands and Funds, the Director of Agriculture, the Director of Administrative Services, the Director of Aeronautics, the Director of Economic Development, the director of the Public Employees Retirement Board, the Director-State Engineer, the Director of Banking and Finance, the Director of Insurance, the Director of Motor Vehicles, the Director of Veterans' Affairs, the Director of Natural Resources, the Director of Correctional Services, the Nebraska Emergency Operating Center, each judge of the Nebraska Workers' Compensation Court, each commissioner of the Commission of Industrial Relations, the Nebraska Liquor Control Commission, the State Real Estate Commission, the secretary of the Game and Parks Commission, the Board of Pardons, each state institution under the Department of Health and Human Services, each state institution under the State Department of Education, the State Surveyor, the Nebraska State Patrol, the materiel division of the Department of Administrative Services, the personnel division of the Department of Administrative Services, the Nebraska Motor Vehicle Industry Licensing Board, the Board of Trustees of the Nebraska State Colleges, each of the Nebraska state colleges, each district judge of the State of Nebraska, each judge of the county court, each judge of a separate juvenile court, the Lieutenant Governor, each United States Senator from Nebraska, each United States Representative from Nebraska, each clerk of the district court for the use of the district court, the clerk of the Nebraska Workers' Compensation Court, each clerk of the county court, each county attorney, each county public defender, each county law library, and the inmate library at all state penal and correctional institutions, and each member of the Legislature shall be entitled to two complete sets, and two complete sets of such volumes as are necessary to update previously issued volumes, but each member of the Legislature and each judge of any court referred to in this section shall be entitled, on request, to an additional complete set. Copies of the statutes distributed without charge, as listed in this section, shall be the property of the state or governmental subdivision of the state and not the personal property of the particular person receiving a copy. Distribution of statutes

to the library of the College of Law of the University of Nebraska shall be as provided in sections 85-176 and 85-177.

Source: Laws 1943, c. 115, § 17, p. 407; R.S.1943, § 49-617; Laws 1944, Spec. Sess., c. 3, § 5, p. 100; Laws 1947, c. 185, § 5, p. 612; Laws 1951, c. 345, § 1, p. 1132; Laws 1957, c. 210, § 3, p. 743; Laws 1961, c. 242, § 2, p. 722; Laws 1961, c. 243, § 3, p. 725; Laws 1961, c. 415, § 5, p. 1247; Laws 1961, c. 416, § 8, p. 1266; Laws 1963, c. 303, § 3, p. 898; Laws 1965, c. 305, § 1, p. 858; Laws 1967, c. 326, § 1, p. 865; Laws 1967, c. 325, § 1, p. 863; Laws 1971, LB 36, § 4; Laws 1972, LB 1174, § 1; Laws 1972, LB 1032, § 254; Laws 1972, LB 1284, § 18; Laws 1973, LB 1, § 5; Laws 1973, LB 572, § 1; Laws 1973, LB 563, § 4; Laws 1974, LB 595, § 1; Laws 1975, LB 59, § 4; Laws 1978, LB 168, § 1; Laws 1984, LB 13, § 82; Laws 1985, LB 498, § 2; Laws 1987, LB 572, § 6; Laws 1991, LB 732, § 118; Laws 1992, Third Spec. Sess., LB 14, § 3; Laws 1995, LB 271, § 7; Laws 1996, LB 906, § 2; Laws 1996, LB 1044, § 278; Laws 1999, LB 36, § 4; Laws 2000, LB 692, § 9; Laws 2000, LB 900, § 241; Laws 2000, LB 1085, § 3; Laws 2007, LB296, § 223; Laws 2007, LB334, § 7; Laws 2007, LB472, § 8.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 223, with LB 334, section 7, and LB 472, section 8, to reflect all amendments.

Note: The changes made by LB 296 and LB 334 became operative July 1, 2007. The changes made by LB 472 became effective September 1, 2007.

ARTICLE 8

DEFINITIONS, CONSTRUCTION, AND CITATION

Section.

49-801.01. Internal Revenue Code; reference.

49-801.01 Internal Revenue Code; reference. Except as provided by Article VIII, section 1B, of the Constitution of Nebraska and in sections 77-2701.01, 77-2714 to 77-27,123, 77-27,191, 77-4103, 77-4104, 77-4108, 77-5509, 77-5515, 77-5527 to 77-5529, 77-5539, 77-5717 to 77-5719, 77-5728, 77-5802, 77-5803, 77-5806, and 77-5903, any reference to the Internal Revenue Code refers to the Internal Revenue Code of 1986 as it exists on February 15, 2007.

Source: Laws 1995, LB 574, § 1; Laws 1996, LB 984, § 1; Laws 1997, LB 46, § 1; Laws 1998, LB 1015, § 2; Laws 1999, LB 33, § 1; Laws 2000, LB 944, § 1; Laws 2001, LB 122, § 1; Laws 2001, LB 620, § 45; Laws 2002, LB 989, § 8; Laws 2003, LB 281, § 1; Laws 2004, LB 1017, § 1; Laws 2005, LB 312, § 1; Laws 2005, LB 383, § 1; Laws 2006, LB 1003, § 2; Laws 2007, LB315, § 1.
Effective date February 15, 2007.

ARTICLE 14

NEBRASKA POLITICAL ACCOUNTABILITY AND DISCLOSURE ACT

(a) GENERAL PROVISIONS

Section.

49-1401. Act, how cited.

(b) CAMPAIGN PRACTICES

- 49-1449. Committee; statement of organization; filing; procedure; late filing fees.
- 49-1449.01. Committee; statement of organization; registration fee; failure to perfect filing; effect.
- 49-1458. Late contribution; how reported; late filing fee.
- 49-1463.02. Late filing fees and civil penalties; interest.
- 49-1478.01. Late independent expenditure; reports required; late filing fee.
- 49-1479.02. Major out-of-state contributor; report; contents; applicability; late filing fee.

(c) LOBBYING PRACTICES

- 49-1483.03. Lobbyist or principal; special report required; when; late filing fee.

(e) NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION

- 49-14,123. Commission; duties.
- 49-14,124.02. Commission; possible criminal violation; referral to Attorney General; duties of Attorney General.
- 49-14,126. Commission; violation; orders; civil penalty.
- 49-14,133. Criminal prosecution; Attorney General; concurrent jurisdiction with county attorney.
- 49-14,140. Nebraska Accountability and Disclosure Commission Cash Fund; created; use; investment.

(a) GENERAL PROVISIONS

49-1401 Act, how cited. Sections 49-1401 to 49-14,141 shall be known and may be cited as the Nebraska Political Accountability and Disclosure Act.

Source: Laws 1976, LB 987, § 1; Laws 1981, LB 134, § 1; Laws 1986, LB 548, § 11; Laws 1987, LB 480, § 1; Laws 1989, LB 815, § 1; Laws 1991, LB 232, § 1; Laws 1994, LB 872, § 1; Laws 1994, LB 1243, § 2; Laws 1995, LB 28, § 3; Laws 1995, LB 399, § 1; Laws 1997, LB 49, § 1; Laws 1997, LB 420, § 15; Laws 1999, LB 581, § 1; Laws 2000, LB 438, § 1; Laws 2000, LB 1021, § 1; Laws 2001, LB 242, § 1; Laws 2002, LB 1003, § 34; Laws 2005, LB 242, § 2; Laws 2007, LB464, § 2; Laws 2007, LB527, § 1.
Effective date September 1, 2007.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 464, section 2, with LB 527, section 1, to reflect all amendments.

(b) CAMPAIGN PRACTICES

49-1449 Committee; statement of organization; filing; procedure; late filing fees. (1) Each committee shall file a statement of organization pursuant to this section and pay a registration fee pursuant to section 49-1449.01 with the commission. Except as provided in subsection (2) of this section, such statement of organization shall be filed and fee paid within ten days after a committee is formed. The commission shall maintain a statement of organization filed by a committee until notified of the committee's dissolution. Any person who fails to file with the commission a statement of organization required by this subsection shall pay to the commission a late filing fee of twenty-five dollars for each day the statement remains not filed in violation of this subsection, not to exceed seven hundred fifty dollars.

(2) If the committee is formed within thirty days prior to an election for which the committee exists, the statement of organization shall be filed and registration fee paid within two business days after the committee is formed. Any person who fails to file with the commission a statement of organization required by this subsection shall pay to the commission a late filing fee of one hundred dollars for each day the statement remains not filed in violation of this subsection, not to exceed one thousand dollars.

Source: Laws 1976, LB 987, § 49; Laws 1980, LB 535, § 7; Laws 1999, LB 416, § 5; Laws 2001, LB 242, § 3; Laws 2003, LB 349, § 1; Laws 2007, LB527, § 2.
Effective date September 1, 2007.

49-1449.01 Committee; statement of organization; registration fee; failure to perfect filing; effect. (1) At the time that each committee files its statement of organization pursuant to section 49-1449, the committee shall pay to the commission a registration fee of one hundred dollars. The filing of a statement of organization is not perfected unless accompanied by the registration fee.

(2) A committee which has not perfected its filing of a statement of organization by the date due as specified in section 49-1449 shall not make or receive contributions or expenditures until such time as the filing of the statement of organization is perfected, except that:

(a) A committee may make an expenditure to pay the registration fee; and

(b) A committee may make expenditures for thirty days after the termination of its registration if the expenditures are part of the process of dissolving the committee and the committee dissolves within thirty days after the termination of its registration.

(3) The registration fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Nebraska Accountability and Disclosure Commission Cash Fund.

Source: Laws 2007, LB527, § 3.
Effective date September 1, 2007.

49-1458 Late contribution; how reported; late filing fee. (1) A committee which receives a late contribution shall report the contribution to the commission by filing a report within two days after the date of its receipt. The report may be filed by hand delivery, facsimile transmission, telegraph, express delivery service, or any other written means of communication, including electronic means approved by the commission, and need not contain an original signature.

(2) The report shall include the full name, street address, occupation, employer, and principal place of business of the contributor, the amount of the contribution, and the date of receipt.

(3) A late contribution shall be reported on subsequent campaign statements without regard to reports filed pursuant to this section.

(4) Any committee which fails to file a report of late contributions with the commission as required by this section shall pay to the commission a late filing fee of one hundred dollars for each of the first ten days the report remains not filed in violation of this section. After the

tenth day, such committee shall pay, for each day the report remains not filed, an additional late filing fee of one percent of the amount of the late contribution which was required to be reported, not to exceed ten percent of the amount of the late contribution which was required to be reported.

(5) For purposes of this section, late contribution means a contribution of one thousand dollars or more received after the closing date for campaign statements as provided in subdivision (1)(b) of section 49-1459.

Source: Laws 1976, LB 987, § 58; Laws 1996, LB 1263, § 1; Laws 1999, LB 416, § 10; Laws 2000, LB 438, § 5; Laws 2005, LB 242, § 15; Laws 2007, LB434, § 1.
Effective date September 1, 2007.

49-1463.02 Late filing fees and civil penalties; interest. Interest shall accrue on all late filing fees and civil penalties imposed under the Nebraska Political Accountability and Disclosure Act at the rate specified in section 45-104.02, as such rate may from time to time be adjusted. The interest shall begin to accrue thirty days after the commission sends notice to the person of the assessment of the late filing fee or civil penalty. A written request filed with the commission for relief from late filing fees shall stay the accrual of interest on a late filing fee until such time as the commission grants or denies the request. The commission may waive the payment of accrued interest in the amount of twenty-five dollars or less.

Source: Laws 2000, LB 438, § 9; Laws 2007, LB527, § 4.
Effective date September 1, 2007.

49-1478.01 Late independent expenditure; reports required; late filing fee. (1) An independent committee, including a separate segregated political fund, which makes a late independent expenditure shall report the expenditure to the commission by filing within two days after the date of the expenditure the committee's full name and street address, the amount of the expenditure, and the date of the expenditure. The report shall include (a) the full name and street address of the recipient of the expenditure, (b) the name and office sought of the candidate whose nomination or election is supported or opposed by the expenditure, and (c) the identification of the ballot question, the qualification, passage, or defeat of which is supported or opposed. Filing of a report of a late independent expenditure may be by any written means of communication, including electronic means approved by the commission, and need not contain an original signature. A late independent expenditure shall be reported on subsequent campaign statements without regard to reports filed pursuant to this section.

(2) A committee which fails to file a report of a late independent expenditure with the commission as required by this section shall pay to the commission a late filing fee of one hundred dollars for each of the first ten days the report remains not filed in violation of this section. After the tenth day, such committee shall pay, for each day the report remains not filed, an additional late filing fee of one percent of the amount of the late independent expenditure which was required to be reported, not to exceed ten percent of the amount of the late independent expenditure which was required to be reported.

(3) For purposes of this section, late independent expenditure means an independent expenditure as defined in section 49-1428 of one thousand dollars or more made after the closing date for campaign statements as provided in subdivision (1)(b) of section 49-1459.

Source: Laws 2000, LB 438, § 6; Laws 2007, LB434, § 2.
Effective date September 1, 2007.

49-1479.02 Major out-of-state contributor; report; contents; applicability; late filing fee. (1) A major out-of-state contributor shall file with the commission an out-of-state contribution report. An out-of-state contribution report shall be filed on a form prescribed by the commission within ten days after the end of the calendar month in which a person becomes a major out-of-state contributor. For the remainder of the calendar year, a major out-of-state contributor shall file an out-of-state contribution report with the commission within ten days after the end of each calendar month in which the contributor makes a contribution or expenditure.

(2) An out-of-state contribution report shall disclose as to each contribution or expenditure not previously reported (a) the amount, nature, value, and date of the contribution or expenditure, (b) the name and address of the committee, candidate, or person who received the contribution or expenditure, (c) the name and address of the person filing the report, and (d) the name, address, occupation, and employer of each person making a contribution of more than two hundred dollars in the calendar year to the person filing the report.

(3) This section shall not apply to (a) a person who files a report of a contribution or an expenditure pursuant to subsection (2) of section 49-1469, (b) a person required to file a report or campaign statement pursuant to section 49-1469.07, (c) a committee having a statement of organization on file with the commission, or (d) a person or committee registered with the Federal Election Commission.

(4) Any person who fails to file an out-of-state contribution report with the commission as required by this section shall pay to the commission a late filing fee of one hundred dollars for each of the first ten days the report remains not filed in violation of this section. After the tenth day, such person shall pay, for each day the report remains not filed, an additional late filing fee of one percent of the amount of the contributions or expenditures which were required to be reported, not to exceed ten percent of the amount of the contributions or expenditures which were required to be reported.

Source: Laws 1997, LB 49, § 7; Laws 1999, LB 416, § 15; R.S.1943, (2003), § 49-1469.04; Laws 2005, LB 242, § 29; Laws 2007, LB434, § 3.
Effective date September 1, 2007.

(c) LOBBYING PRACTICES

49-1483.03 Lobbyist or principal; special report required; when; late filing fee. (1) Any lobbyist or principal who receives or expends more than five thousand dollars for lobbying purposes during any calendar month in which the Legislature is in session shall,

within fifteen days after the end of such calendar month, file a special report disclosing for that calendar month all information required by section 49-1483. All information disclosed in a special report shall also be disclosed in the next quarterly report required to be filed. The requirement to file a special report shall not apply to a receipt or expenditure for lobbyist fees for lobbying services which have otherwise been disclosed in the lobbyist's application for registration.

(2) Any lobbyist who fails to file a special report required by this section with the Clerk of the Legislature or the commission shall pay to the commission a late filing fee of one hundred dollars for each of the first ten days the report remains not filed in violation of this section. After the tenth day, such lobbyist shall pay, for each day the report remains not filed, an additional late filing fee of one percent of the amount of the receipts and expenditures which were required to be reported, not to exceed ten percent of the amount of the receipts and expenditures which were required to be reported.

Source: Laws 1994, LB 872, § 5; Laws 1994, LB 1243, § 6; Laws 1996, LB 1263, § 6; Laws 1999, LB 416, § 17; Laws 2007, LB434, § 4.
Effective date September 1, 2007.

(e) NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION

49-14,123 Commission; duties. In addition to any other duties prescribed by law, the commission shall:

(1) Prescribe and publish, after notice and opportunity for public comment, rules and regulations to carry out the Campaign Finance Limitation Act and the Nebraska Political Accountability and Disclosure Act pursuant to the Administrative Procedure Act;

(2) Prescribe forms for statements and reports required to be filed pursuant to the Campaign Finance Limitation Act and the Nebraska Political Accountability and Disclosure Act and furnish such forms to persons required to file such statements and reports;

(3) Prepare and publish one or more manuals explaining the duties of all persons and other entities required to file statements and reports by the acts and setting forth recommended uniform methods of accounting and reporting for such filings;

(4) Accept and file any reasonable amount of information voluntarily supplied that exceeds the requirements of the acts;

(5) Make statements and reports filed with the commission available for public inspection and copying during regular office hours and make copying facilities available at a cost of not more than fifty cents per page;

(6) Compile and maintain an index of all reports and statements filed with the commission to facilitate public access to such reports and statements;

(7) Prepare and publish summaries of statements and reports filed with the commission and special reports and technical studies to further the purposes of the acts;

(8) Review all statements and reports filed with the commission in order to ascertain whether any person has failed to file a required statement or has filed a deficient statement;

(9) Preserve statements and reports filed with the commission for a period of not less than five years from the date of receipt;

(10) Issue and publish advisory opinions on the requirements of the acts upon the request of a person or government body directly covered or affected by the acts. Any such opinion rendered by the commission, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the person or government body who requested the opinion and who acted in reliance on it in good faith unless material facts were omitted or misstated by the person or government body in the request for the opinion;

(11) Act as the primary civil enforcement agency for violations of the Nebraska Political Accountability and Disclosure Act and the rules or regulations promulgated thereunder and act as the primary civil enforcement agency for violations of the Campaign Finance Limitation Act and the rules or regulations promulgated thereunder;

(12) Receive all late filing fees, civil penalties, and interest imposed pursuant to the Campaign Finance Limitation Act or the Nebraska Political Accountability and Disclosure Act, seek the return of any amount as provided in section 32-1606, and seek the repayment of any amount as provided in section 32-1607 and remit all such funds to the State Treasurer for credit to the Campaign Finance Limitation Cash Fund; and

(13) Prepare and distribute to the appropriate local officials statements of financial interest, campaign committee organization forms, filing instructions and forms, and such other forms as the commission may deem appropriate.

Source: Laws 1976, LB 987, § 123; Laws 1981, LB 545, § 13; Laws 1981, LB 134, § 9; Laws 1983, LB 479, § 5; Laws 1992, LB 556, § 12; Laws 1994, LB 872, § 12; Laws 1994, LB 1243, § 14; Laws 1997, LB 420, § 20; Laws 1997, LB 758, § 3; Laws 2000, LB 438, § 10; Laws 2005, LB 242, § 56; Laws 2007, LB464, § 3.
Effective date September 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

Campaign Finance Limitation Act, see section 32-1601.

49-14,124.02 Commission; possible criminal violation; referral to Attorney General; duties of Attorney General. At any time after the commencement of a preliminary investigation, the commission may refer the matter of a possible criminal violation of the Campaign Finance Limitation Act or the Nebraska Political Accountability and Disclosure Act to the Attorney General for consideration of criminal prosecution. The fact of the referral shall not be subject to the confidentiality provisions of section 49-14,124.01. The Attorney General shall determine if a matter referred by the commission will be criminally prosecuted. If the Attorney General determines that a matter will be criminally prosecuted, he or she shall advise the commission in writing of the determination. If the Attorney General determines that a matter will not be criminally prosecuted, he or she shall advise the commission in writing of the determination. The fact of the declination to criminally prosecute shall not be subject to the confidentiality provisions of section 49-14,124.01.

Source: Laws 2007, LB464, § 4.
Effective date September 1, 2007.

Cross Reference

Campaign Finance Limitation Act, see section 32-1601.

49-14,126 Commission; violation; orders; civil penalty. (1) The commission, upon finding that there has been a violation of the Nebraska Political Accountability and Disclosure Act or any rule or regulation promulgated thereunder, may issue an order requiring the violator to do one or more of the following:

- (a) Cease and desist violation;
- (b) File any report, statement, or other information as required; or
- (c) Pay a civil penalty of not more than two thousand dollars for each violation of the act, rule, or regulation.

(2) If the commission finds a violation of the Campaign Finance Limitation Act, the commission shall assess a civil penalty as required under section 32-1604, 32-1606.01, or 32-1612.

Source: Laws 1976, LB 987, § 126; Laws 1981, LB 134, § 11; Laws 1997, LB 420, § 23; Laws 1999, LB 416, § 19; Laws 2006, LB 188, § 18; Laws 2007, LB464, § 5.
Effective date September 1, 2007.

Cross Reference

Campaign Finance Limitation Act, see section 32-1601.

49-14,133 Criminal prosecution; Attorney General; concurrent jurisdiction with county attorney. The Attorney General has jurisdiction to enforce the criminal provisions of the Campaign Finance Limitation Act and the Nebraska Political Accountability and Disclosure Act. The county attorney of the county in which a violation of the Campaign Finance Limitation Act or the Nebraska Political Accountability and Disclosure Act occurs shall have concurrent jurisdiction.

Source: Laws 1976, LB 987, § 133; Laws 1981, LB 134, § 13; Laws 1997, LB 758, § 4; Laws 2007, LB464, § 6.
Effective date September 1, 2007.

Cross Reference

Campaign Finance Limitation Act, see section 32-1601.

49-14,140 Nebraska Accountability and Disclosure Commission Cash Fund; created; use; investment. The Nebraska Accountability and Disclosure Commission Cash Fund is hereby created. The fund shall consist of funds received by the commission pursuant to sections 49-1449.01, 49-1470, 49-1480.01, 49-1482, 49-1495, 49-14,123, and 49-14,123.01. The fund shall not include late filing fees or civil penalties assessed and collected by the commission. The fund shall be used by the commission in administering the Nebraska Political Accountability and Disclosure Act. Any money in the fund available for investment

shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1989, LB 815, § 4; Laws 1994, LB 872, § 13; Laws 1994, LB 1066, § 40; Laws 1994, LB 1243, § 15; Laws 2007, LB527, § 5.
Effective date September 1, 2007.

Cross Reference

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

CHAPTER 50

LEGISLATURE

Article.

4. Legislative Council. 50-417.02 to 50-448.

ARTICLE 4

LEGISLATIVE COUNCIL

Section.

- 50-417.02. Act, how cited.
- 50-417.03. Terms, defined.
- 50-417.04. Law enforcement officers retirement plans survey; purpose; report; actuarial survey.
- 50-417.05. Political subdivisions and state; provide information; confidentiality.
- 50-417.06. State and political subdivisions; liability.
- 50-445. State-Tribal Relations Committee; members.
- 50-446. Corporate farming and ranching court rulings; legislative findings.
- 50-447. Policy instruments advancing state interest in structure, development, and progress of agricultural production; study by Agriculture Committee; use of experts.
- 50-448. Attorney General; duties; powers.

50-417.02 Act, how cited. Sections 50-417.02 to 50-417.06 shall be known and may be cited as the Law Enforcement Officers Retirement Survey Act.

Source: Laws 2007, LB328, § 12.
Operative date May 31, 2007.

50-417.03 Terms, defined. For purposes of the Law Enforcement Officers Retirement Survey Act:

- (1) Committee means the Nebraska Retirement Systems Committee of the Legislature;
- (2) Law enforcement officer means any police officer, sheriff, and deputy sheriff employed by a political subdivision and any conservation officer employed by the state;
- (3) Political subdivision means any political subdivision of this state which employs police officers, sheriffs, or deputy sheriffs, but does not include a city of the metropolitan class, a city of the primary class, or a county containing a city of the metropolitan class; and
- (4) Retirement system means the Nebraska Public Employees Retirement Systems.

Source: Laws 2007, LB328, § 13.
Operative date May 31, 2007.

50-417.04 Law enforcement officers retirement plans survey; purpose; report; actuarial survey. (1) The retirement system shall conduct a survey of the retirement plans

currently in place for law enforcement officers throughout Nebraska. The retirement system shall conduct the survey and issue a report to the committee no later than October 1, 2007.

(2) At the time that the report is provided to the committee, information which supports the report shall be provided to any firm employed to conduct an actuarial survey from the information gathered by the retirement system upon the firm's request. The information provided shall not include any personal information such as the name or social security number of law enforcement officers.

(3) The survey shall include, but not be limited to, the following information:

- (a) What types of retirement plans are in place for law enforcement officers; and
- (b) Any other information which the retirement system or the committee deems necessary.

(4) The retirement system shall create, in consultation with the committee, a method to receive the materials required for the survey. The method shall utilize a unique identifier for each law enforcement officer, each political subdivision, and the state agency responding.

(5) The purpose of the survey is to conduct a review of the many retirement plans throughout Nebraska for law enforcement officers and to assist an actuarial firm in determining the cost to implement a defined benefit retirement plan with benefits capped at various levels between sixty and eighty percent of pay with costs separately determined for cities of the first class, cities of the second class, villages, counties, and the state.

Source: Laws 2007, LB328, § 14.
Operative date May 31, 2007.

50-417.05 Political subdivisions and state; provide information; confidentiality. Each political subdivision and the state shall provide the retirement system with such information as the retirement system deems necessary and appropriate to conduct the review required under section 50-417.04. The material to be obtained by the retirement system may include, but not be limited to, the following concerning law enforcement officers employed by the political subdivision or the state:

- (1) Names;
- (2) Dates of birth;
- (3) Dates of hire;
- (4) Taxable earnings for the prior fiscal year;
- (5) Years of service;
- (6) Gender;
- (7) Whether or not the law enforcement officer is enrolled in a retirement plan;
- (8) The type of plan the law enforcement officer is enrolled in, the required employee contribution percentage, and the employer contribution percentage, along with an indication if it is a fixed percentage or a variable contribution rate. If the law enforcement officer is enrolled in a defined contribution plan, the political subdivision or state shall also disclose the account balance attributable to employer contributions and employee contributions, excluding

any balance due to rollovers from another qualified plan or attributable to voluntary employee contributions; and

(9) Any other information that the retirement system or the committee deems important to the conduct of the survey.

Any material received by the retirement system shall be considered confidential and shall not be disclosed to a third party except as provided in subsection (2) of section 50-417.04.

Source: Laws 2007, LB328, § 15.
Operative date May 31, 2007.

50-417.06 State and political subdivisions; liability. Neither the state nor any political subdivision shall be held liable for providing information requested or be responsible for the payment of the actuarial survey under the Law Enforcement Officers Retirement Survey Act.

Source: Laws 2007, LB328, § 16.
Operative date May 31, 2007.

50-445 State-Tribal Relations Committee; members. The State-Tribal Relations Committee is hereby established as a special legislative committee with the intent of fostering better relationships between the state and the federally recognized Indian tribes within the state. The Executive Board of the Legislative Council shall appoint seven members of the Legislature to the committee. The appointments shall be based on interest and knowledge. The chairperson and vice-chairperson of the State-Tribal Relations Committee shall also be designated by the executive board. All appointments shall be made within the first six days of the legislative session in odd-numbered years. Members shall serve two-year terms corresponding with legislative sessions and may be reappointed for consecutive terms. The committee shall meet as necessary to, among other things, consider, study, monitor, and review legislation that impacts state-tribal relations issues and to present draft legislation and policy recommendations to the appropriate standing committee of the Legislature.

Source: Laws 2007, LB34, § 1.
Effective date September 1, 2007.

50-446 Corporate farming and ranching court rulings; legislative findings. The Legislature finds that the ruling of the United States District Court for the District of Nebraska in *Jones v. Gale*, 405 F. Supp. 2d 1066, D. Neb. 2005, and subsequent rulings on appeal affirming such ruling holding Article XII, section 8, of the Constitution of Nebraska to be invalid, enjoined, or limited in application has significant implications for the future structure, development, and progress of agricultural production in Nebraska.

Source: Laws 2007, LB516, § 1.
Effective date May 25, 2007.

50-447 Policy instruments advancing state interest in structure, development, and progress of agricultural production; study by Agriculture Committee; use of

experts. (1) It is the intent of the Legislature to support and facilitate a study by the Agriculture Committee of the Legislature to identify policy instruments available to the Legislature and the people of Nebraska, including, as appropriate, but not necessarily requiring or limited to, modification of Article XII, section 8, of the Constitution of Nebraska, in order to foster and enhance legal, social, and economic conditions in Nebraska consistent with and which advance those state interests that exist in the structure, development, and progress of agricultural production.

(2) Within the limits of funds appropriated for such purpose, the Executive Board of the Legislative Council may, in coordination and cooperation with the Agriculture Committee of the Legislature, commission experts in the fields of agricultural economics, agricultural law, commerce clause jurisprudence, and other areas of study and practice to provide assistance, specific research or reports, or presentations in order to assist the Agriculture Committee of the Legislature in carrying out the intent of the Legislature under this section.

Source: Laws 2007, LB516, § 2.
Effective date May 25, 2007.

50-448 Attorney General; duties; powers. (1) It is the intent of the Legislature that the Attorney General perform, acquire, and otherwise cause to be made available such research as may be appropriate to inform and assist the Agriculture Committee of the Legislature in identifying policy instruments available to the Legislature and the people of Nebraska, including, as appropriate, but not necessarily requiring or limited to, modification of Article XII, section 8, of the Constitution of Nebraska, in order to foster and enhance legal, social, and economic conditions in Nebraska consistent with and which advance those state interests that exist in the structure, development, and progress of agricultural production in Nebraska.

(2) The Attorney General may contract with experts in the fields of agricultural economics, agricultural law, commerce clause jurisprudence, and other areas of study and practice to assist the Attorney General in carrying out the intent of the Legislature under this section.

Source: Laws 2007, LB516, § 3.
Effective date May 25, 2007.

CHAPTER 52

LIENS

Article.

1. Construction Lien.
 - (a) Miscellaneous. 52-118.
13. Filing System for Farm Product Security Interests. 52-1301 to 52-1318.
16. Master Lien List. 52-1602.

ARTICLE 1

CONSTRUCTION LIEN

(a) MISCELLANEOUS

Section.

- 52-118. Public building construction; bond required for benefit of laborers, mechanics, and suppliers; exception.

(a) MISCELLANEOUS

52-118 Public building construction; bond required for benefit of laborers, mechanics, and suppliers; exception. (1) Except as provided in subsection (2) of this section, it shall be the duty of the State of Nebraska or any department or agency thereof, the county boards, the contracting board of all cities, villages, and school districts, all public boards empowered by law to enter into a contract for the erecting, furnishing, or repairing of any public building, bridge, highway, or other public structure or improvement, and any officer or officers so empowered by law to enter into such contract, to which the general provisions of the mechanics' lien laws do not apply and when the mechanics and laborers have no lien to secure the payment of their wages and suppliers who furnish material and who lease equipment for such work have no lien to secure payment therefor, to take from the person as defined in section 49-801 to whom the contract is awarded a payment bond or bonds in a sum not less than the contract price with a corporate surety company and agent selected by such person, conditioned for the payment of all laborers and mechanics for labor that is performed and for the payment for material and equipment rental which is actually used or rented in the erecting, furnishing, or repairing of the public structure or improvement or in performing the contract.

(2) The labor and material payment bond or bonds referred to in subsection (1) of this section shall not be required for (a) any project bid or proposed by the State of Nebraska or any department or agency thereof which has a total cost of fifteen thousand dollars or less or (b) any project bid or proposed by any county board, contracting board of any city, village, or school district, public board, or officer referred to in subsection (1) of this section which has a total cost of ten thousand dollars or less unless the state, department, agency, board, or officer includes a bond requirement in the specifications for the project.

(3) The bond or bonds referred to in subsection (1) of this section shall be to, filed with, approved by, and safely kept by the State of Nebraska, department or agency thereof, officer or officers, or board awarding the contract. No contract referred to in subsection (1) of this section shall be entered into by the State of Nebraska, department or agency thereof, officer or officers, or board referred to in subsection (1) of this section until the bond or bonds referred to in subsection (1) of this section has been so made, filed, and approved.

(4) The bond or bonds referred to in subsection (1) of this section may be taken from the person to whom the contract is awarded by the owner and owner's representative jointly as determined by the owner. The corporate surety company referred to in subsection (1) of this section shall have a rating acceptable to the owner as the owner may require.

Source: Laws 1889, c. 28, § 1, p. 375; Laws 1913, c. 170, § 1, p. 522; R.S.1913, § 3840; C.S.1922, § 3224; C.S.1929, § 52-118; R.S.1943, § 52-118; Laws 1953, c. 179, § 4, p. 567; Laws 1955, c. 199, § 1, p. 565; Laws 1961, c. 257, § 4, p. 754; Laws 1990, LB 257, § 1; Laws 2001, LB 420, § 32; Laws 2007, LB208, § 1.
Effective date September 1, 2007.

ARTICLE 13

FILING SYSTEM FOR FARM PRODUCT SECURITY INTERESTS

Section.

- 52-1301. Legislative intent.
- 52-1302. Definitions, where found.
- 52-1302.01. Approved unique identifier, defined.
- 52-1307. Effective financing statement, defined.
- 52-1308. Farm product, defined.
- 52-1312. Central filing system; Secretary of State; duties; system requirements; fees.
- 52-1313. Filing of effective financing statement; fees.
- 52-1314. Filing of continuation statement; requirements; insolvency proceedings; effect.
- 52-1315. Notice of lapse of effective financing statement; waiver of notice; effect.
- 52-1317. Verification of security interest; seller; duty.
- 52-1318. Rules and regulations; federal provisions adopted; Secretary of State; duties.

52-1301 Legislative intent. It is the intent of the Legislature to adopt a central filing system for security interests relating to farm products pursuant to section 1324 of the Food Security Act of 1985, Public Law 99-198. It is also the intent of the Legislature that upon the adoption of the central filing system that security interest holders be encouraged to use such system in lieu of any other notice provided by section 1324 for farm products produced or located in the State of Nebraska which are included in the central filing system.

Source: Laws 1986, Third Spec. Sess., LB 1, § 1; Laws 2007, LB124, § 58.
Operative date September 1, 2007.

52-1302 Definitions, where found. For purposes of sections 52-1301 to 52-1322, unless the context otherwise requires, the definitions found in sections 52-1302.01 to 52-1311 shall be used.

Source: Laws 1986, Third Spec. Sess., LB 1, § 2; Laws 1998, LB 924, § 19; Laws 2003, LB 4, § 1; Laws 2007, LB124, § 59.
Operative date September 1, 2007.

52-1302.01 Approved unique identifier, defined. Approved unique identifier means a number, combination of numbers and letters, or other identifier selected by the Secretary of State using a selection system or method approved by the Secretary of the United States Department of Agriculture.

Source: Laws 2007, LB124, § 60.
Operative date September 1, 2007.

52-1307 Effective financing statement, defined. Effective financing statement means a statement that:

- (1) Is an original or reproduced copy thereof;
- (2) Is filed by the secured party in the office of the Secretary of State;
- (3) Is signed, authorized, or otherwise authenticated by the debtor, unless filed electronically, in which case the signature of the debtor shall not be required;
- (4) Contains (a) the name and address of the secured party, (b) the name and address of the debtor, (c) the social security number or other approved unique identifier of the debtor or, in the case of a debtor doing business other than as an individual, the Internal Revenue Service taxpayer identification number or other approved unique identifier of such debtor, (d) a description of the farm products subject to the security interest, (e) each county in Nebraska where the farm product is produced or located, (f) crop year unless every crop of the farm product in question, for the duration of the effective financing statement, is to be subject to the particular security interest, (g) further details of the farm product subject to the security interest if needed to distinguish it from other quantities of such product owned by the same person or persons but not subject to the particular security interest, and (h) such other information that the Secretary of State may require to comply with section 1324 of the Food Security Act of 1985, Public Law 99-198, or to more efficiently carry out his or her duties under sections 52-1301 to 52-1322;
- (5) Shall be amended in writing, within three months, and signed, authorized, or otherwise authenticated by the debtor and filed, to reflect material changes. If the statement is filed electronically, the signature of the debtor shall not be required;
- (6) Remains effective for a period of five years from the date of filing, subject to extensions for additional periods of five years each by refileing or filing a continuation statement within six months before the expiration of the five-year period;
- (7) Lapses on either the expiration of the effective period of the statement or the filing of a notice signed by the secured party that the statement is terminated, whichever occurs first;
- (8) Is accompanied by the requisite filing fee set by section 52-1313; and

(9) Substantially complies with the requirements of this section even though the statement contains minor errors that are not seriously misleading.

An effective financing statement may, for any given debtor or debtors, cover more than one farm product located in more than one county.

Source: Laws 1986, Third Spec. Sess., LB 1, § 7; Laws 1998, LB 924, § 20; Laws 1998, LB 1321, § 90; Laws 1999, LB 552, § 1; Laws 2002, LB 1105, § 439; Laws 2003, LB 4, § 2; Laws 2007, LB124, § 61. Operative date September 1, 2007.

52-1308 Farm product, defined. Farm product shall mean an agricultural commodity, a species of livestock used or produced in farming operations, or a product of such crop or livestock in its unmanufactured state, that is in the possession of a person engaged in farming operations. Farm products shall include, but are not limited to, apples, artichokes, asparagus, barley, bees, buffalo, bull semen, cantaloupe, carrots, cattle and calves, chickens, corn, cucumbers, dry beans, eggs, embryos or genetic products, emu, fish, flax seed, grapes, hay, hogs, honey, honeydew melon, horses, legumes, milk, millet, muskmelon, oats, onions, ostrich, popcorn, potatoes, pumpkins, raspberries, rye, safflower, seed crops, sheep and lambs, silage, sorghum grain, soybeans, squash, strawberries, sugar beets, sunflower seeds, sweet corn, tomatoes, trees, triticale, turkeys, vetch, walnuts, watermelon, wheat, and wool. The Secretary of State may, by rule and regulation, add other farm products to the list specified in this section if such products are covered by the general definition provided by this section.

Source: Laws 1986, Third Spec. Sess., LB 1, § 8; Laws 2007, LB124, § 62. Operative date September 1, 2007.

52-1312 Central filing system; Secretary of State; duties; system requirements; fees. The Secretary of State shall design and implement a central filing system for effective financing statements. The Secretary of State shall be the system operator. The system shall provide a means for filing effective financing statements or notices of such financing statements on a statewide basis. The system shall include requirements:

(1) That an effective financing statement or notice of such financing statement shall be filed in the office of the Secretary of State. A debtor's residence shall be presumed to be the residence shown on the filing. The showing of an improper residence shall not affect the validity of the filing. The filing officer shall mark the statement or notice with a consecutive file number and with the date and hour of filing and shall hold the statement or notice or a microfilm or other photographic copy thereof for public inspection. In addition, the filing officer shall index the statements and notices according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement;

(2) That the Secretary of State compile information from all effective financing statements or notices filed with the Secretary of State into a master list (a) organized according to farm product, (b) arranged within each such product (i) in alphabetical order according to the last name of the individual debtors or, in the case of debtors doing business other than as individuals, the first word in the name of such debtors, (ii) in numerical order according

to the social security number or other approved unique identifier of the individual debtors or, in the case of debtors doing business other than as individuals, the Internal Revenue Service taxpayer identification number or other approved unique identifier of such debtors, (iii) geographically by county, and (iv) by crop year, and (c) containing the information referred to in subdivision (4) of section 52-1307;

(3) That the Secretary of State cause the information on the master list to be published in lists (a) by farm product arranged alphabetically by debtor and (b) by farm product arranged numerically by the debtor's social security number or other approved unique identifier for individual debtors or, in the case of debtors doing business other than as individuals, the Internal Revenue Service taxpayer identification number or other approved unique identifier of such debtors. If a registered buyer so requests, the list or lists for such buyer may be limited to any county or group of counties where the farm product is produced or located or to any crop year or years or a combination of such identifiers;

(4) That all buyers of farm products, commission merchants, selling agents, and other persons may register with the Secretary of State to receive lists described in subdivision (3) of this section. Any buyer of farm products, commission merchant, selling agent, or other person conducting business from multiple locations shall be considered as one entity. Such registration shall be on an annual basis. The Secretary of State shall provide the form for registration which shall include the name and address of the registrant and the list or lists described in subdivision (3) of this section which such registrant desires to receive. A registration shall not be completed until the form provided is properly completed and received by the Secretary of State accompanied by the proper registration fee. The fee for annual registration shall be thirty dollars.

A registrant shall pay an additional annual fee to receive quarterly lists described in subdivision (3) of this section. For each farm product list provided on microfiche, the annual fee shall be twenty-five dollars. For each farm product list provided on paper, the annual fee shall be two hundred dollars. The annual fee for a special list which is a list limited to fewer than all counties or less than all crop years shall be one hundred fifty dollars for each farm product.

The Secretary of State shall maintain a record of the registrants and the lists and contents of the lists received by the registrants for a period of five years;

(5) That the lists as identified pursuant to subdivision (4) of this section be distributed by the Secretary of State on a quarterly basis and be in written or printed form. A registrant may choose in lieu of receiving a written or printed form to receive statewide lists on microfiche. The Secretary of State may provide for the distribution of the lists on any other medium and establish reasonable charges therefor. The distribution shall be made by either certified or registered mail, return receipt requested.

The Secretary of State shall, by rule and regulation, establish the dates upon which the quarterly distributions will be made, the dates after which a filing of an effective financing statement will not be reflected on the next quarterly distribution of lists, and the dates by which a registrant must complete a registration to receive the next quarterly list; and

(6) That the Secretary of State remove lapsed and terminated effective financing statements or notices of such financing statements from the master list prior to preparation of the lists required to be distributed by subdivision (5) of this section.

Effective financing statements or any amendments or continuations of effective financing statements originally filed in the office of the county clerk that have been indexed and entered on the Secretary of State's central filing system need not be retained by the county filing office and may be disposed of or destroyed.

The Secretary of State shall apply to the Secretary of the United States Department of Agriculture for (a) certification of the central filing system and (b) approval of the system or method of selecting an approved unique identifier.

The Secretary of State shall deposit any funds received pursuant to subdivision (4) of this section in the Uniform Commercial Code Cash Fund.

Source: Laws 1986, Third Spec. Sess., LB 1, § 12; Laws 1988, LB 943, § 13; Laws 1998, LB 924, § 21; Laws 1998, LB 1321, § 91; Laws 2005, LB 451, § 1; Laws 2007, LB124, § 63.
Operative date September 1, 2007.

52-1313 Filing of effective financing statement; fees. (1) Presentation for filing of an effective financing statement and the acceptance of the statement by the Secretary of State constitutes filing under sections 52-1301 to 52-1322.

(2) The fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing of an effective financing statement, an amendment, or a continuation statement shall be ten dollars. There shall be no fee for the filing of a termination statement.

(3) The fee for attachments to all instruments submitted for filing shall be fifty cents per page.

(4) The Secretary of State shall deposit any fees received pursuant to this section in the Uniform Commercial Code Cash Fund.

Source: Laws 1986, Third Spec. Sess., LB 1, § 13; Laws 1998, LB 924, § 22; Laws 1998, LB 1321, § 92; Laws 2003, LB 4, § 3; Laws 2004, LB 1099, § 1; Laws 2007, LB124, § 64.
Operative date September 1, 2007.

52-1314 Filing of continuation statement; requirements; insolvency proceedings; effect. (1) A continuation statement may be filed by the secured party within six months prior to the expiration of the five-year period specified in subdivision (6) of section 52-1307. Any such continuation statement shall be signed, authorized, or otherwise authenticated by the secured party, identify the original statement by file number, and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement shall be continued for five years after the last date to which the filing was effective whereupon it shall lapse unless another continuation statement is filed prior to such lapse. If an effective financing statement exists at the time insolvency proceedings are commenced by or against the debtor, the effective financing statement shall remain effective

until termination of the insolvency proceedings and thereafter for a period of sixty days or until the expiration of the five-year period, whichever occurs later. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement.

(2) Any continuation statement that is filed electronically shall include an electronic signature of the secured party which may consist of a signature recognized under section 86-611 or an access code or any other identifying word or number assigned by the Secretary of State that is unique to a particular filer.

Source: Laws 1986, Third Spec. Sess., LB 1, § 14; Laws 1999, LB 552, § 2; Laws 2002, LB 1105, § 440; Laws 2007, LB124, § 65.
Operative date September 1, 2007.

52-1315 Notice of lapse of effective financing statement; waiver of notice; effect. (1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party shall notify the debtor in writing of his or her right to have a notice of lapse of his or her effective financing statement filed which shall lead to the removal of his or her name from the files and lists compiled by the Secretary of State. In lieu of such notice, the secured party may acquire a waiver of the debtor of such right and a request by the debtor that his or her effective financing statement be retained on file. Such notice may be given or waiver acquired by the secured party at any time prior to the time specified in this subsection for giving the notice.

(2) If the secured party does not furnish the notice or obtain the waiver specified in subsection (1) of this section, the secured party shall, within ten days of final payment of all secured obligations, provide the debtor with a written notification of the debtor's right to have a notice of lapse filed. The secured party shall on written demand by the debtor send the debtor a notice of lapse to the effect that he or she no longer claims a security interest under the effective financing statement, which shall be identified by file number. The notice of lapse need only be signed, authorized, or otherwise authenticated by the secured party.

(3) If the affected secured party fails to send a notice of lapse within ten days after proper demand, pursuant to subsection (2) of this section, he or she shall be liable to the debtor for any loss caused to the debtor by such failure.

(4) On presentation to the Secretary of State of a notice of lapse, he or she shall treat it as a termination statement and note it in the index. If he or she has received the notice of lapse in duplicate, he or she shall return one copy of the notice of lapse to the filing party stamped to show the time of receipt thereof.

(5) There shall be no fee for filing a notice of lapse or termination statement.

Source: Laws 1986, Third Spec. Sess., LB 1, § 15; Laws 1988, LB 943, § 14; Laws 1998, LB 1321, § 93; Laws 2007, LB124, § 66.
Operative date September 1, 2007.

52-1317 Verification of security interest; seller; duty. In order to verify the existence or nonexistence of a security interest, a buyer, commission merchant, or selling agent may request a seller to disclose such seller's social security number or approved unique identifier

or, in the case of a seller doing business other than as an individual, the Internal Revenue Service taxpayer identification number or approved unique identifier of such seller.

Source: Laws 1986, Third Spec. Sess., LB 1, § 17; Laws 2007, LB124, § 67.
Operative date September 1, 2007.

52-1318 Rules and regulations; federal provisions adopted; Secretary of State; duties. (1) The State of Nebraska hereby adopts the federal rules and regulations in effect on September 1, 2007, adopted and promulgated to implement section 1324 of the Food Security Act of 1985, Public Law 99-198. If there is a conflict between such rules and regulations and sections 52-1301 to 52-1322, the federal rules and regulations shall apply.

(2) The Secretary of State shall adopt and promulgate rules and regulations necessary to implement sections 52-1301 to 52-1322 pursuant to the Administrative Procedure Act. If necessary to obtain federal certification of the central filing system, additional or alternative requirements made in conformity with section 1324 of the Food Security Act of 1985, Public Law 99-198, may be imposed by the Secretary of State by rule and regulation.

(3) The Secretary of State shall prescribe all forms to be used for filing effective financing statements and subsequent actions.

Source: Laws 1986, Third Spec. Sess., LB 1, § 18; Laws 1998, LB 924, § 24; Laws 2003, LB 4, § 4; Laws 2007, LB124, § 68.
Operative date September 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

ARTICLE 16

MASTER LIEN LIST

Section.

52-1602. Master lien list; distribution; registration to receive list; fee.

52-1602 Master lien list; distribution; registration to receive list; fee. (1) The master lien list prescribed in section 52-1601 shall be distributed by the Secretary of State on a quarterly basis corresponding to the date on which the lists provided pursuant to sections 52-1301 to 52-1322 are distributed. Such master lien list may be mailed with the list provided pursuant to sections 52-1301 to 52-1322. If mailed separately, the master lien list shall be mailed by either certified or registered mail, return receipt requested.

(2) Any person may register with the Secretary of State to receive the master lien list prescribed in section 52-1601. Such registration shall be on an annual basis. The Secretary of State shall provide the form for registration. A registration shall not be completed until the form provided is properly completed and received by the Secretary of State accompanied by the proper registration fee. The fee for annual registration shall be thirty dollars, except that a registrant under sections 52-1301 to 52-1322 shall not be required to pay the registration fee

provided by this section in addition to the registration fee paid pursuant to sections 52-1301 to 52-1322 for the same annual registration period. Beginning for calendar year 1989, a registrant under sections 52-1601 to 52-1605 shall pay an additional annual fee to receive quarterly master lien lists prescribed in section 52-1601. For each master lien list provided on microfiche, the annual fee shall be twenty-five dollars. For each master lien list provided on paper, the annual fee shall be two hundred dollars. The Secretary of State may provide for the distribution of master lien lists on any other medium and may establish reasonable charges therefor.

(3) The Secretary of State, by rule and regulation, shall establish the dates after which a filing of liens will not be reflected on the next quarterly distribution of the master lien list and the date by which a registrant shall complete a registration in order to receive the next quarterly master lien list.

(4) The Secretary of State shall deposit any funds received pursuant to subsection (2) of this section in the Uniform Commercial Code Cash Fund.

Source: Laws 1988, LB 987, § 2; Laws 1998, LB 924, § 25; Laws 2003, LB 4, § 5; Laws 2007, LB124, § 69. Operative date September 1, 2007.

CHAPTER 53

LIQUORS

Article.

1. Nebraska Liquor Control Act.
 - (a) General Provisions. 53-101, 53-103.
 - (c) Nebraska Liquor Control Commission; General Powers. 53-116.02, 53-117.07.
 - (d) Licenses; Issuance and Revocation. 53-123 to 53-134.03.
 - (f) Tax. 53-163, 53-164.01.
 - (h) Keg Sales. 53-167.03.
 - (i) Prohibited Acts. 53-169 to 53-188.
 - (k) Prosecution and Enforcement. 53-1,115.
3. Nebraska Grape and Winery Board. 53-304.
4. Minor Alcoholic Liquor Liability Act. 53-401 to 53-409.

ARTICLE 1

NEBRASKA LIQUOR CONTROL ACT

(a) GENERAL PROVISIONS

Section.

- 53-101. Act, how cited.
- 53-103. Terms, defined.

(c) NEBRASKA LIQUOR CONTROL COMMISSION; GENERAL POWERS

- 53-116.02. Licensee; violations; forfeiture or revocation of license.
- 53-117.07. Proceedings to suspend, cancel, or revoke licenses before commission.

(d) LICENSES; ISSUANCE AND REVOCATION

- 53-123. Licenses; types.
- 53-123.15. Shipping license; when required; rights of licensee; application; contents; violation; disciplinary action.
- 53-123.16. Microdistillery license; rights of licensee.
- 53-124. Annual license fees; where paid.
- 53-124.11. Special designated license; issuance; procedure; fee.
- 53-124.12. Annual catering license; issuance; procedure; fee; occupation tax.
- 53-129. Retail, craft brewery, and microdistillery licenses; premises to which applicable.
- 53-131. Retail, craft brewery, and microdistillery licenses; application; fees; notice of application to city, village, or county.
- 53-132. Retail, craft brewery, or microdistillery license; commission; duties.
- 53-133. Retail, craft brewery, and microdistillery licenses; hearing; when held; procedure.
- 53-134. Retail, craft brewery, and microdistillery licenses; city and village governing bodies; county boards; powers, functions, and duties.
- 53-134.03. Retail, craft brewery, and microdistillery licenses; regulation by cities and villages.

LIQUORS

(f) TAX

- 53-163. Commission; rounding of amounts on returns or reports; authorized.
- 53-164.01. Alcoholic liquor; tax; payment; report; penalty; bond; sale to instrumentality of armed forces; credit for tax paid.

(h) KEG SALES

- 53-167.03. Keg identification number; prohibited acts; violation; penalty; deposit.

(i) PROHIBITED ACTS

- 53-169. Manufacturer or wholesaler; craft brewery or microdistillery licensee; limitations.
- 53-169.01. Manufacturer; interest in licensed wholesaler; prohibitions; exceptions.
- 53-171. Licenses; issuance of more than one kind to same person; when unlawful; craft brewery or microdistillery licensee; limitations.
- 53-180.02. Minor; prohibited acts; exception; governing bodies; powers.
- 53-188. Governmental subdivision under prohibition; effect on licenses.

(k) PROSECUTION AND ENFORCEMENT

- 53-1,115. Proceedings before commission; service upon parties; rehearings; costs.

(a) GENERAL PROVISIONS

53-101 Act, how cited. Sections 53-101 to 53-1,122 shall be known and may be cited as the Nebraska Liquor Control Act.

Source: Laws 1935, c. 116, § 1, p. 373; C.S.Supp.,1941, § 53-301; R.S.1943, § 53-101; Laws 1988, LB 490, § 3; Laws 1988, LB 901, § 1; Laws 1988, LB 1089, § 1; Laws 1989, LB 70, § 1; Laws 1989, LB 441, § 1; Laws 1989, LB 781, § 1; Laws 1991, LB 344, § 2; Laws 1991, LB 582, § 1; Laws 1993, LB 183, § 1; Laws 1993, LB 332, § 1; Laws 1994, LB 1292, § 1; Laws 2000, LB 973, § 1; Laws 2001, LB 114, § 1; Laws 2004, LB 485, § 2; Laws 2006, LB 845, § 1; Laws 2007, LB549, § 1; Laws 2007, LB578, § 1.
Effective date September 1, 2007.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 549, section 1, with LB 578, section 1, to reflect all amendments.

53-103 Terms, defined. For purposes of the Nebraska Liquor Control Act, unless the context otherwise requires:

(1) Alcohol means the product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin thereof, and includes synthetic ethyl alcohol and alcohol processed or sold in a gaseous form. Alcohol does not include denatured alcohol or wood alcohol;

(2) Spirits means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin, or other spirituous liquors and such liquors when rectified, blended, or otherwise mixed with alcohol or other substances;

(3) Wine means any alcoholic beverage obtained by the fermentation of the natural contents of fruits or vegetables, containing sugar, including such beverages when fortified by the addition of alcohol or spirits;

(4) Beer means a beverage obtained by alcoholic fermentation of an infusion or concoction of barley or other grain, malt, and hops in water and includes, but is not limited to, beer, ale, stout, lager beer, porter, and near beer;

(5) Alcoholic liquor includes alcohol, spirits, wine, beer, and any liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed as a beverage by a human being. Alcoholic liquor also includes confections or candy with alcohol content of more than one-half of one percent alcohol. The act does not apply to (a) alcohol used in the manufacture of denatured alcohol produced in accordance with acts of Congress and regulations adopted and promulgated pursuant to such acts, (b) flavoring extracts, syrups, medicinal, mechanical, scientific, culinary, or toilet preparations, or food products unfit for beverage purposes, but the act applies to alcoholic liquor used in the manufacture, preparation, or compounding of such products or confections or candy that contains more than one-half of one percent alcohol, or (c) wine intended for use and used by any church or religious organization for sacramental purposes;

(6) Near beer means beer containing less than one-half of one percent of alcohol by volume;

(7) Original package means any bottle, flask, jug, can, cask, barrel, keg, hogshead, or other receptacle or container used, corked or capped, sealed, and labeled by the manufacturer of alcoholic liquor to contain and to convey any alcoholic liquor;

(8) Manufacturer means every brewer, fermenter, distiller, rectifier, winemaker, blender, processor, bottler, or person who fills or refills an original package and others engaged in brewing, fermenting, distilling, rectifying, or bottling alcoholic liquor, including a wholly owned affiliate or duly authorized agent for a manufacturer;

(9) Nonbeverage user means every manufacturer of any of the products set forth and described in subsection (4) of section 53-160, when such product contains alcoholic liquor, and all laboratories, hospitals, and sanatoria using alcoholic liquor for nonbeverage purposes;

(10) Manufacture means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle, or fill an original package with any alcoholic liquor and includes blending but does not include the mixing or other preparation of drinks for serving by those persons authorized and permitted in the act to serve drinks for consumption on the premises where sold;

(11) Wholesaler means a person importing or causing to be imported into the state or purchasing or causing to be purchased within the state alcoholic liquor for sale or resale to retailers licensed under the act, whether the business of the wholesaler is conducted under the terms of a franchise or any other form of an agreement with a manufacturer or manufacturers, or who has caused alcoholic liquor to be imported into the state or purchased in the state from a manufacturer or manufacturers and was licensed to conduct such a business by the commission on May 1, 1970, or has been so licensed since that date. Wholesaler does not include any retailer licensed to sell alcoholic liquor for consumption off the premises who sells

alcoholic liquor other than beer or wine to another retailer pursuant to section 53-175, except that any such retailer shall obtain the required federal wholesaler's basic permit and federal wholesale liquor dealer's special tax stamp. Wholesaler includes a distributor, distributorship, and jobber;

(12) Person means any natural person, trustee, corporation, partnership, or limited liability company;

(13) Retailer means a person who sells or offers for sale alcoholic liquor for use or consumption and not for resale in any form except as provided in section 53-175;

(14) Sell at retail and sale at retail means sale for use or consumption and not for resale in any form except as provided in section 53-175;

(15) Commission means the Nebraska Liquor Control Commission;

(16) Sale means any transfer, exchange, or barter in any manner or by any means for a consideration and includes any sale made by any person, whether principal, proprietor, agent, servant, or employee;

(17) To sell means to solicit or receive an order for, to keep or expose for sale, or to keep with intent to sell;

(18) Restaurant means any public place (a) which is kept, used, maintained, advertised, and held out to the public as a place where meals are served and where meals are actually and regularly served, (b) which has no sleeping accommodations, and (c) which has adequate and sanitary kitchen and dining room equipment and capacity and a sufficient number and kind of employees to prepare, cook, and serve suitable food for its guests;

(19) Club means a corporation (a) which is organized under the laws of this state, not for pecuniary profit, solely for the promotion of some common object other than the sale or consumption of alcoholic liquor, (b) which is kept, used, and maintained by its members through the payment of annual dues, (c) which owns, hires, or leases a building or space in a building suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests, and (d) which has suitable and adequate kitchen and dining room space and equipment and a sufficient number of servants and employees for cooking, preparing, and serving food and meals for its members and their guests. The affairs and management of such club shall be conducted by a board of directors, executive committee, or similar body chosen by the members at their annual meeting, and no member, officer, agent, or employee of the club shall be paid or shall directly or indirectly receive, in the form of salary or other compensation, any profits from the distribution or sale of alcoholic liquor to the club or the members of the club or its guests introduced by members other than any salary fixed and voted at any annual meeting by the members or by the governing body of the club out of the general revenue of the club;

(20) Hotel means any building or other structure (a) which is kept, used, maintained, advertised, and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent, or residential, (b) in which twenty-five or more rooms are used for the

sleeping accommodations of such guests, and (c) which has one or more public dining rooms where meals are served to such guests, such sleeping accommodations and dining rooms being conducted in the same buildings in connection therewith and such building or buildings or structure or structures being provided with adequate and sanitary kitchen and dining room equipment and capacity;

(21) Nonprofit corporation means any corporation organized under the laws of this state, not for profit, which has been exempted from the payment of federal income taxes;

(22) Minor means any person, male or female, under twenty-one years of age, regardless of marital status;

(23) Brand means alcoholic liquor identified as the product of a specific manufacturer;

(24) Franchise or agreement, with reference to the relationship between a manufacturer and wholesaler, includes one or more of the following: (a) A commercial relationship of a definite duration or continuing indefinite duration which is not required to be in writing; (b) a relationship by which the wholesaler is granted the right to offer and sell the manufacturer's brands by the manufacturer; (c) a relationship by which the franchise, as an independent business, constitutes a component of the manufacturer's distribution system; (d) a relationship by which the operation of the wholesaler's business is substantially associated with the manufacturer's brand, advertising, or other commercial symbol designating the manufacturer; and (e) a relationship by which the operation of the wholesaler's business is substantially reliant on the manufacturer for the continued supply of beer;

(25) Territory or sales territory means the wholesaler's area of sales responsibility for the brand or brands of the manufacturer;

(26) Suspend means to cause a temporary interruption of all rights and privileges of a license;

(27) Cancel means to discontinue all rights and privileges of a license;

(28) Revoke means to permanently void and recall all rights and privileges of a license;

(29) Generic label means a label which is not protected by a registered trademark, either in whole or in part, or to which no person has acquired a right pursuant to state or federal statutory or common law;

(30) Private label means a label which the purchasing wholesaler or retailer has protected, in whole or in part, by a trademark registration or which the purchasing wholesaler or retailer has otherwise protected pursuant to state or federal statutory or common law;

(31) Farm winery means any enterprise which produces and sells wines produced from grapes, other fruit, or other suitable agricultural products of which at least seventy-five percent of the finished product is grown in this state;

(32) Campus, as it pertains to the southern boundary of the main campus of the University of Nebraska-Lincoln, means the south right-of-way line of R Street and abandoned R Street from 10th to 17th streets;

(33) Brewpub means any restaurant or hotel which produces on its premises a maximum of ten thousand barrels of beer per year;

(34) Manager means a person appointed by a corporation to oversee the daily operation of the business licensed in Nebraska. A manager shall meet all the requirements of the act as though he or she were the applicant, except for residency and citizenship;

(35) Shipping license means a license granted pursuant to section 53-123.15;

(36) Sampling means consumption on the premises of a retail licensee of not more than five samples of one fluid ounce or less of alcoholic liquor by the same person in a twenty-four-hour period;

(37) Microbrewery means any small brewery producing a maximum of ten thousand barrels of beer per year;

(38) Craft brewery means a brewpub or a microbrewery;

(39) Local governing body means (a) the city council or village board of trustees of a city or village within which the licensed premises are located or (b) if the licensed premises are not within the corporate limits of a city or village, the county board of the county within which the licensed premises are located;

(40) Consume means knowingly and intentionally drinking or otherwise ingesting alcoholic liquor; and

(41) Microdistillery means a distillery located in Nebraska that is licensed to distill liquor on the premises of the distillery licensee and produces ten thousand or fewer gallons of liquor annually.

Source: Laws 1935, c. 116, § 2, p. 374; C.S.Supp.,1941, § 53-302; R.S.1943, § 53-103; Laws 1961, c. 258, § 1, p. 757; Laws 1963, c. 310, § 1, p. 919; Laws 1963, Spec. Sess., c. 4, § 1, p. 66; Laws 1963, Spec. Sess., c. 5, § 1, p. 71; Laws 1965, c. 319, § 1, p. 904; Laws 1965, c. 318, § 2, p. 886; Laws 1969, c. 298, § 1, p. 1072; Laws 1971, LB 234, § 2; Laws 1971, LB 752, § 1; Laws 1972, LB 1086, § 2; Laws 1973, LB 111, § 1; Laws 1980, LB 221, § 2; Laws 1980, LB 848, § 1; Laws 1981, LB 483, § 1; Laws 1983, LB 213, § 2; Laws 1984, LB 56, § 1; Laws 1985, LB 279, § 2; Laws 1985, LB 183, § 1; Laws 1986, LB 871, § 1; Laws 1986, LB 911, § 2; Laws 1987, LB 468, § 1; Laws 1988, LB 490, § 4; Laws 1988, LB 901, § 2; Laws 1988, LB 1089, § 2; Laws 1989, LB 441, § 2; Laws 1989, LB 154, § 1; Laws 1991, LB 344, § 5; Laws 1993, LB 121, § 317; Laws 1994, LB 859, § 2; Laws 1994, LB 1313, § 2; Laws 1996, LB 750, § 1; Laws 1996, LB 1090, § 1; Laws 1999, LB 267, § 2; Laws 2001, LB 114, § 2; Laws 2001, LB 278, § 1; Laws 2003, LB 536, § 2; Laws 2004, LB 485, § 3; Laws 2006, LB 562, § 1; Laws 2007, LB549, § 2.
Effective date September 1, 2007.

(c) NEBRASKA LIQUOR CONTROL COMMISSION; GENERAL POWERS

53-116.02 Licensee; violations; forfeiture or revocation of license. Whenever any retail licensee, craft brewery licensee, or microdistillery licensee has been convicted by any court of a violation of the Nebraska Liquor Control Act, the licensee may, in addition to the penalties for such offense, incur a forfeiture of the license and all money that had been paid for the license. The local governing body may conditionally revoke the license subject to a final order of the commission, or the commission may revoke the license in an original proceeding brought before it for that purpose.

Source: Laws 1935, c. 116, § 47, p. 403; C.S.Supp.,1941, § 53-347; R.S.1943, § 53-128; Laws 1989, LB 781, § 7; R.S.Supp.,1990, § 53-128; Laws 1991, LB 344, § 10; Laws 1993, LB 183, § 4; Laws 1999, LB 267, § 4; Laws 2004, LB 485, § 5; Laws 2007, LB549, § 3.
Effective date September 1, 2007.

53-117.07 Proceedings to suspend, cancel, or revoke licenses before commission. All proceedings for the suspension, cancellation, or revocation of licenses of manufacturers, wholesalers, nonbeverage users, craft breweries, microdistilleries, railroads, airlines, shippers, and boats shall be before the commission, and the proceedings shall be in accordance with rules and regulations adopted and promulgated by it not inconsistent with law. No such license shall be so suspended, canceled, or revoked except after a hearing by the commission with reasonable notice to the licensee and opportunity to appear and defend.

Source: Laws 1935, c. 116, § 94, p. 425; C.S.Supp.,1941, § 53-394; R.S.1943, § 53-140; Laws 1967, c. 332, § 11, p. 891; Laws 1980, LB 848, § 8; Laws 1988, LB 1089, § 19; R.S.1943, (1988), § 53-140; Laws 1991, LB 344, § 12; Laws 1996, LB 750, § 2; Laws 2007, LB549, § 4.
Effective date September 1, 2007.

(d) LICENSES; ISSUANCE AND REVOCATION

53-123 Licenses; types. Licenses issued by the commission shall be of the following types: (1) Manufacturer's license; (2) alcoholic liquor wholesale license, except beer; (3) beer wholesale license; (4) retail license; (5) railroad license; (6) airline license; (7) boat license; (8) nonbeverage user's license; (9) farm winery license; (10) craft brewery license; (11) shipping license; (12) special designated license; (13) catering license; and (14) microdistillery license.

Source: Laws 1935, c. 116, § 25, p. 390; C.S.Supp.,1941, § 53-325; R.S.1943, § 53-123; Laws 1947, c. 187, § 1, p. 616; Laws 1947, c. 188, § 1, p. 621; Laws 1963, c. 310, § 3, p. 926; Laws 1967, c. 332, § 3, p. 881; Laws 1985, LB 279, § 3; Laws 1988, LB 1089, § 8; Laws 1991, LB 344, § 16; Laws 1996, LB 750, § 3; Laws 2004, LB 485, § 9; Laws 2007, LB549, § 5.
Effective date September 1, 2007.

53-123.15 Shipping license; when required; rights of licensee; application; contents; violation; disciplinary action. (1) No person shall order or receive alcoholic liquor in this state which has been shipped directly to him or her from outside this state by any person other than a holder of a shipping license issued by the commission, except that a licensed wholesaler may receive not more than three gallons of wine in any calendar year from any person who is not a holder of a shipping license.

(2) The commission may issue a shipping license to a manufacturer. Such license shall allow the licensee to ship alcoholic liquor only to a licensed wholesaler, except that a licensed wholesaler may, without a shipping license and for the purposes of subdivision (2) of section 53-161, receive beer in this state which has been shipped from outside the state by a manufacturer in accordance with the Nebraska Liquor Control Act to the wholesaler, then transported by the wholesaler to another state for retail distribution, and then returned by the retailer to such wholesaler.

(3) The commission may issue a shipping license to any person who deals with vintage wines, which shipping license shall allow the licensee to distribute such wines to a licensed

wholesaler in the state. For purposes of distributing vintage wines, a licensed shipper must utilize a designated wholesaler if the manufacturer has a designated wholesaler. For purposes of this section, vintage wine shall mean a wine verified to be ten years of age or older and not available from a primary American source of supply.

(4) The commission may issue a shipping license to any person who sells and ships alcoholic liquor from another state directly to a consumer in this state. A person who receives a license pursuant to this subsection shall pay the fee required in subdivision (11) of section 53-124. Until April 30, 2012, such fee shall be collected by the commission and remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund.

(5) The application for a shipping license shall be in such form as the commission prescribes. The application shall contain all provisions the commission deems proper and necessary to effectuate the purpose of any section of the act and the rules and regulations of the commission that apply to manufacturers and shall include, but not be limited to, provisions that the applicant, in consideration of the issuance of such shipping license, agrees:

(a) To comply with and be bound by section 53-164.01 in making and filing reports, paying taxes, penalties, and interest, and keeping records;

(b) To permit and be subject to all of the powers granted by section 53-164.01 to the commission or its duly authorized employees or agents for inspection and examination of the applicant's premises and records and to pay the actual expenses, excluding salary, reasonably attributable to such inspections and examinations made by duly authorized employees of the commission if within the United States; and

(c) That if the applicant violates any of the provisions of the application or the license, any section of the act, or any of the rules and regulations of the commission that apply to manufacturers, the commission may revoke or suspend such shipping license for such period of time as it may determine.

Source: Laws 1991, LB 344, § 49; Laws 1994, LB 416, § 1; Laws 1995, LB 874, § 1; Laws 2001, LB 671, § 1; Laws 2004, LB 485, § 14; Laws 2007, LB441, § 1.
Effective date September 1, 2007.

53-123.16 Microdistillery license; rights of licensee. Any person who operates a microdistillery shall obtain a license pursuant to the Nebraska Liquor Control Act. A license to operate a microdistillery shall permit the licensee to produce on the premises a maximum of ten thousand gallons of liquor per year. A microdistillery may also sell to licensed wholesalers for sale and distribution to licensed retailers. A microdistillery license issued pursuant to this section shall be the only license required by the Nebraska Liquor Control Act for the manufacture and retail sale of microdistilled product for consumption on or off the licensed premises, except that the sale of any beer, wine, or alcoholic liquor, other than microdistilled product manufactured by the microdistillery licensee, by the drink for consumption on the microdistillery premises shall require the appropriate retail license. Any license held by the operator of a microdistillery shall be subject to the act. A holder of a microdistillery license may obtain an annual catering license pursuant to section 53-124.12 or a special

designated license pursuant to section 53-124.11. The commission may, upon the conditions it determines, grant to any microdistillery licensed under this section a special license authorizing the microdistillery to purchase and to import, from such persons as are entitled to sell the same, wines or spirits to be used solely as ingredients and for the sole purpose of blending with and flavoring microdistillery products as a part of the microdistillation process.

Source: Laws 2007, LB549, § 6.
Effective date September 1, 2007.

53-124 Annual license fees; where paid. At the time application is made to the commission for a license of any type, the applicant shall pay the fee provided in this section and, if the applicant is an individual, provide the applicant's social security number. The fees for annual licenses finally issued by the commission shall be as follows:

- (1)(a) For a license to manufacture alcohol and spirits.....\$1,000.00;
- (b) For a license to operate a microdistillery.....\$250.00;
- (2) For a license to manufacture beer and wine or to operate a farm winery or craft brewery:
 - (a) Manufacture of beer, excluding beer produced by a craft brewery:
 - (i) 1 to 100 barrel daily capacity, or any part thereof.....\$100.00
 - (ii) 100 to 150 barrel daily capacity.....200.00
 - (iii) 150 to 200 barrel daily capacity.....350.00
 - (iv) 200 to 300 barrel daily capacity.....500.00
 - (v) 300 to 400 barrel daily capacity.....650.00
 - (vi) 400 to 500 barrel daily capacity.....700.00
 - (vii) 500 barrel daily capacity, or more.....800.00;
 - (b) Operation of a craft brewery.....\$250.00;
 - (c) Manufacture of wines.....\$250.00;
 - (d) Operation of a farm winery.....\$250.00.

For purposes of subdivision (2)(a) of this section, daily capacity shall mean the average daily barrel production for the previous twelve months of manufacturing operation. If no such basis for comparison exists, the manufacturing licensee shall pay in advance for the first year's operation a fee of five hundred dollars;

- (3) Alcoholic liquor wholesale license, for the first and each additional wholesale place of business operated in this state by the same licensee and wholesaling alcoholic liquor, except beer and wines produced from farm wineries.....\$750.00;
- (4) Beer wholesale license, for the first and each additional wholesale place of business operated in this state by the same licensee and wholesaling beer only.....\$500.00;
- (5) For a retail license:
 - (a) Class A: Beer only except for craft breweries, for consumption on the premises, the sum of one hundred dollars;
 - (b) Class B: Beer only except for craft breweries, for consumption off the premises, sales in the original packages only, the sum of one hundred dollars;
 - (c) Class C: Alcoholic liquor, for consumption on the premises and off the premises, sales in original packages only, the sum of three hundred dollars, except for farm winery,

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microdistillery, or craft brewery sales outlets. If a Class C license is held by a nonprofit corporation, it shall be restricted to consumption on the premises only. A Class C license may have a sampling designation restricting consumption on the premises to sampling, but such designation shall not affect sales for consumption off the premises under such license;

(d) Class D: Alcoholic liquor, including beer, for consumption off the premises, sales in the original packages only, except as provided in subsection (2) of section 53-123.04, the sum of two hundred dollars, except for farm winery, microdistillery, or craft brewery sales outlets; and

(e) Class I: Alcoholic liquor, for consumption on the premises, the sum of two hundred fifty dollars, except for farm winery, microdistillery, or craft brewery sales outlets.

All applicable license fees shall be paid by the applicant or licensee directly to the city or village treasurer in the case of premises located inside the corporate limits of a city or village and directly to the county treasurer in the case of premises located outside the corporate limits of a city or village;

(6) For a railroad license.....\$100.00 and \$1.00 for each duplicate;

(7) For a boat license.....\$50.00;

(8) For a nonbeverage user's license:

Class 1.....\$5.00

Class 2.....25.00

Class 3.....50.00

Class 4.....100.00

Class 5.....250.00;

(9) For an airline license.....\$100.00 and \$1.00 for each duplicate;

(10) For a shipping license, except a shipping license issued pursuant to subsection (4) of section 53-123.15.....\$200.00; and

(11) For a shipping license issued pursuant to subsection (4) of section 53-123.15.....\$500.00.

The license year, unless otherwise provided in the Nebraska Liquor Control Act, shall commence on May 1 of each year and shall end on the following April 30, except that the license year for a Class C license shall commence on November 1 of each year and shall end on the following October 31. During the license year, no license shall be issued for a sum less than the amount of the annual license fee as fixed in this section, regardless of the time when the application for such license has been made, except that (a) when there is a purchase of an existing licensed business and a new license of the same class is issued or (b) upon the issuance of a new license for a location which has not been previously licensed, the license fee and occupation taxes shall be prorated on a quarterly basis as of the date of issuance.

Source: Laws 1935, c. 116, § 26, p. 391; C.S.Supp.,1941, § 53-326; R.S.1943, § 53-124; Laws 1955, c. 202, § 1, p. 576; Laws 1959, c. 249, § 2, p. 861; Laws 1961, c. 258, § 2, p. 761; Laws 1963, c. 309, § 2, p. 913; Laws 1963, c. 310, § 7, p. 927; Laws 1963, Spec. Sess., c. 5, § 3, p. 76; Laws 1965, c. 318, § 6, p. 893; Laws 1967, c. 332, § 6, p. 882; Laws 1967, c. 336, § 1, p. 897; Laws 1973, LB 111, § 4; Laws 1974, LB 681, § 5; Laws 1975, LB 414, § 1; Laws 1977, LB 237, § 1; Laws 1978, LB 386, § 4; Laws 1983, LB 133, § 2; Laws 1983, LB 213, § 3; Laws 1984, LB 947, § 1; Laws 1985, LB 279, § 8; Laws 1988, LB 1089, § 11; Laws 1989, LB 154, § 3; Laws 1989, LB 781, § 6; Laws 1991, LB 344, § 26; Laws 1993, LB 183, § 9; Laws 1993, LB 53, § 3; Laws 1994, LB 1313, § 3; Laws 1996, LB 750, § 6; Laws 1997, LB 752, § 131; Laws 2001, LB 278, § 4; Laws 2001, LB 671, § 2; Laws 2004, LB 485, § 15; Laws 2007, LB549, § 7.
Effective date September 1, 2007.

53-124.11 Special designated license; issuance; procedure; fee. (1) The commission may issue a special designated license for sale or consumption of alcoholic liquor at a designated location to a retail licensee, a craft brewery licensee, a microdistillery licensee, a farm winery licensee, a municipal corporation, a fine arts museum incorporated as a nonprofit corporation, a religious nonprofit corporation which has been exempted from the payment of federal income taxes, a political organization which has been exempted from the payment of federal income taxes, or any other nonprofit corporation the purpose of which is fraternal, charitable, or public service and which has been exempted from the payment of federal income taxes, under conditions specified in this section. The applicant shall demonstrate meeting the requirements of this subsection.

(2) No retail licensee, craft brewery licensee, microdistillery licensee, farm winery licensee, organization, or corporation enumerated in subsection (1) of this section may be issued a special designated license under this section for more than six calendar days in any one calendar year. Only one special designated license shall be required for any application for two or more consecutive days. This subsection shall not apply to any holder of a catering license.

(3) Except for any special designated license issued to a holder of a catering license, there shall be a fee of forty dollars for each day identified in the special designated license. Such fee shall be submitted with the application for the special designated license, collected by the commission, and remitted to the State Treasurer for credit to the General Fund. The applicant shall be exempt from the provisions of the Nebraska Liquor Control Act requiring a registration fee and the provisions of the act requiring the expiration of forty-five days from the time the application is received by the commission prior to the issuance of a license, if granted by the commission. The retail licensees, craft brewery licensees, microdistillery licensees, farm winery licensees, municipal corporations, organizations, and nonprofit corporations enumerated in subsection (1) of this section seeking a special designated license shall file an application on such forms as the commission may prescribe. Such forms shall contain, along with other information as required by the commission, (a) the name of the applicant, (b) the premises for which a special designated license is requested, identified by street and number if practicable and, if not, by some other appropriate description which definitely locates the premises, (c) the name of the owner or lessee of the premises for which the special designated license is requested, (d) sufficient evidence that the holder of the special designated license, if issued, will carry on the activities and business authorized

by the license for himself, herself, or itself and not as the agent of any other person, group, organization, or corporation, for profit or not for profit, (e) a statement of the type of activity to be carried on during the time period for which a special designated license is requested, and (f) sufficient evidence that the activity will be supervised by persons or managers who are agents of and directly responsible to the holder of the special designated license.

(4) No special designated license provided for by this section shall be issued by the commission without the approval of the local governing body. The local governing body may establish criteria for approving or denying a special designated license. The local governing body may designate an agent to determine whether a special designated license is to be approved or denied. Such agent shall follow criteria established by the local governing body in making his or her determination. The determination of the agent shall be considered the determination of the local governing body unless otherwise provided by the local governing body. For purposes of this section, the local governing body shall be the city or village within which the premises for which the special designated license is requested are located or, if such premises are not within the corporate limits of a city or village, then the local governing body shall be the county within which the premises for which the special designated license is requested are located.

(5) If the applicant meets the requirements of this section, a special designated license shall be granted and issued by the commission for use by the holder of the special designated license. All statutory provisions and rules and regulations of the commission that apply to a retail licensee shall apply to the holder of a special designated license with the exception of such statutory provisions and rules and regulations of the commission so designated by the commission and stated upon the issued special designated license, except that the commission may not designate exemption of sections 53-180 to 53-180.07. The decision of the commission shall be final. If the applicant does not qualify for a special designated license, the application shall be denied by the commission.

(6) A special designated license issued by the commission shall be mailed or delivered to the city, village, or county clerk who shall deliver such license to the licensee upon receipt of any fee or tax imposed by such city, village, or county.

Source: Laws 1983, LB 213, § 9; Laws 1988, LB 490, § 5; Laws 1991, LB 344, § 27; Laws 1994, LB 1292, § 4; Laws 1996, LB 750, § 7; Laws 2000, LB 973, § 4; Laws 2006, LB 562, § 4; Laws 2007, LB549, § 8.
Effective date September 1, 2007.

53-124.12 Annual catering license; issuance; procedure; fee; occupation tax. (1) The holder of a license to sell alcoholic liquor at retail issued under subdivision (5) of section 53-124, a craft brewery license, a microdistillery license, or a farm winery license may obtain an annual catering license as prescribed in this section. The catering license shall be issued for the same period and may be renewed in the same manner as the retail license, craft brewery license, microdistillery license, or farm winery license.

(2) Any person desiring to obtain a catering license shall file with the commission:

(a) An application in triplicate original upon such forms as the commission prescribes; and
 (b) A license fee of one hundred dollars payable to the commission, which fee shall be returned to the applicant if the application is denied.

(3) When an application for a catering license is filed, the commission shall notify, by registered or certified mail, return receipt requested with postage prepaid, (a) the clerk of the city or incorporated village in which such applicant is located or (b) if the applicant is not located within a city or incorporated village, the county clerk of the county in which such applicant is located, of the receipt of the application. The commission shall enclose with such notice one copy of the application. The local governing body and the commission shall process the application in the same manner as provided in section 53-132.

(4) The local governing body with respect to catering licensees within its liquor license jurisdiction as provided in subsection (5) of this section may cancel a catering license for cause for the remainder of the period for which such catering license is issued. Any person whose catering license is canceled may appeal to the district court of the county in which the local governing body is located.

(5) For purposes of this section, local governing body means (a) the governing body of the city or village in which the catering licensee is located or (b) if such licensee is not located within a city or village, the governing body of the county in which such licensee is located.

(6) The local governing body may impose an occupation tax on the business of a catering licensee doing business within the liquor license jurisdiction of the local governing body as provided in subsection (5) of this section. Such tax may not exceed double the license fee to be paid under this section.

Source: Laws 1988, LB 490, § 1; Laws 1991, LB 344, § 28; Laws 1994, LB 1292, § 5; Laws 1996, LB 750, § 8; Laws 2001, LB 278, § 5; Laws 2004, LB 485, § 17; Laws 2006, LB 562, § 5; Laws 2007, LB549, § 9.
 Effective date September 1, 2007.

53-129 Retail, craft brewery, and microdistillery licenses; premises to which applicable. Retail, craft brewery, and microdistillery licenses issued under the Nebraska Liquor Control Act apply only to that part of the premises described in the application approved by the commission and in the license issued on the application, and only one location shall be described in each license. After such license has been granted for particular premises, the commission, with the approval of the local governing body and upon proper showing, may endorse upon the license permission to add to, delete from, or abandon the premises described in such license and, if applicable, to move from the premises to other premises approved by it, but in order to obtain such approval the retail, craft brewery, or microdistillery licensee shall file with the local governing body a request in writing and a statement under oath which shows that the premises as added to or deleted from or to which such move is to be made comply in all respects with the requirements of the act. No such addition, deletion, or move shall be made by any such licensee until the license has been endorsed to that effect in writing by the local governing body and by the commission and the licensee furnishes proof of payment of the state registration fee prescribed in section 53-131.

Source: Laws 1935, c. 116, § 49, p. 405; C.S.Supp.,1941, § 53-349; R.S.1943, § 53-129; Laws 1978, LB 386, § 5; Laws 1980, LB 848, § 6; Laws 1983, LB 213, § 11; Laws 1988, LB 1089, § 12; Laws 1989, LB 781, § 8; Laws 1993, LB 183, § 10; Laws 1994, LB 1292, § 7; Laws 1999, LB 267, § 7; Laws 2004, LB 485, § 19; Laws 2007, LB549, § 10.
Effective date September 1, 2007.

53-131 Retail, craft brewery, and microdistillery licenses; application; fees; notice of application to city, village, or county. (1) Any person desiring to obtain a new license to sell alcoholic liquor at retail, a craft brewery license, or a microdistillery license shall file with the commission:

(a) An application in triplicate original upon forms the commission prescribes;

(b) The license fee if under section 53-124 such fee is payable to the commission, which fee shall be returned to the applicant if the application is denied; and

(c) The state registration fee in the sum of forty-five dollars.

(2) The commission shall notify, by registered or certified mail, return receipt requested with postage prepaid, (a) the clerk of the city or village in which such license is sought or (b) if the license sought is not sought within a city or village, the county clerk of the county in which such license is sought, of the receipt of the application and shall enclose one copy of the application with the notice. No such license shall be issued or denied by the commission until the expiration of the time allowed for the receipt of a recommendation of denial or an objection requiring a hearing under subdivision (1)(a) or (b) of section 53-133. During the period of forty-five days after the date of receiving such application from the commission, the local governing body of such city, village, or county may make and submit to the commission recommendations relative to the granting or refusal to grant such license to the applicant.

Source: Laws 1935, c. 116, § 82, p. 417; C.S.Supp.,1941, § 53-382; R.S.1943, § 53-131; Laws 1955, c. 203, § 1, p. 580; Laws 1959, c. 249, § 6, p. 866; Laws 1976, LB 413, § 1; Laws 1980, LB 848, § 7; Laws 1982, LB 928, § 42; Laws 1983, LB 213, § 12; Laws 1984, LB 947, § 2; Laws 1986, LB 911, § 3; Laws 1988, LB 550, § 1; Laws 1988, LB 1089, § 13; Laws 1989, LB 781, § 9; Laws 1991, LB 202, § 4; Laws 1991, LB 344, § 34; Laws 1993, LB 183, § 11; Laws 1996, LB 750, § 9; Laws 1999, LB 267, § 8; Laws 2000, LB 973, § 6; Laws 2001, LB 278, § 7; Laws 2004, LB 485, § 20; Laws 2007, LB549, § 11.
Effective date September 1, 2007.

53-132 Retail, craft brewery, or microdistillery license; commission; duties. (1) If no hearing is required pursuant to subdivision (1)(a) or (b) of section 53-133 and the commission has no objections pursuant to subdivision (1)(c) of such section, the commission may waive the forty-five-day objection period and, if not otherwise prohibited by law, cause a retail license, craft brewery license, or microdistillery license to be signed by its chairperson, attested by its executive director over the seal of the commission, and issued in the manner provided in subsection (4) of this section as a matter of course.

(2) A retail license, craft brewery license, or microdistillery license may be issued to any qualified applicant if the commission finds that (a) the applicant is fit, willing, and able to properly provide the service proposed within the city, village, or county where the premises described in the application are located, (b) the applicant can conform to all provisions and

requirements of and rules and regulations adopted pursuant to the Nebraska Liquor Control Act, (c) the applicant has demonstrated that the type of management and control to be exercised over the premises described in the application will be sufficient to insure that the licensed business can conform to all provisions and requirements of and rules and regulations adopted pursuant to the act, and (d) the issuance of the license is or will be required by the present or future public convenience and necessity.

(3) In making its determination pursuant to subsection (2) of this section the commission shall consider:

- (a) The recommendation of the local governing body;
- (b) The existence of a citizens' protest made in accordance with section 53-133;
- (c) The existing population of the city, village, or county and its projected growth;
- (d) The nature of the neighborhood or community of the location of the proposed licensed premises;
- (e) The existence or absence of other retail licenses, craft brewery licenses, or microdistillery licenses with similar privileges within the neighborhood or community of the location of the proposed licensed premises and whether, as evidenced by substantive, corroborative documentation, the issuance of such license would result in or add to an undue concentration of licenses with similar privileges and, as a result, require the use of additional law enforcement resources;
- (f) The existing motor vehicle and pedestrian traffic flow in the vicinity of the proposed licensed premises;
- (g) The adequacy of existing law enforcement;
- (h) Zoning restrictions;
- (i) The sanitation or sanitary conditions on or about the proposed licensed premises; and
- (j) Whether the type of business or activity proposed to be operated in conjunction with the proposed license is and will be consistent with the public interest.

(4) Retail licenses, craft brewery licenses, or microdistillery licenses issued or renewed by the commission shall be mailed or delivered to the clerk of the city, village, or county who shall deliver the same to the licensee upon receipt from the licensee of proof of payment of (a) the license fee if by the terms of subdivision (5) of section 53-124 the fee is payable to the treasurer of such city, village, or county, (b) any fee for publication of notice of hearing before the local governing body upon the application for the license, (c) the fee for publication of notice of renewal as provided in section 53-135.01, and (d) occupation taxes, if any, imposed by such city, village, or county. Notwithstanding any ordinance or charter power to the contrary, no city, village, or county shall impose an occupation tax on the business of any person, firm, or corporation licensed under the act and doing business within the corporate limits of such city or village or within the boundaries of such county in any sum which exceeds two times the amount of the license fee required to be paid under the act to obtain such license.

(5) Each license shall designate the name of the licensee, the place of business licensed, and the type of license issued.

Source: Laws 1935, c. 116, § 83, p. 419; C.S.Supp.,1941, § 53-383; R.S.1943, § 53-132; Laws 1957, c. 242, § 45, p. 856; Laws 1957, c. 228, § 3, p. 780; Laws 1959, c. 246, § 1, p. 845; Laws 1959, c. 247, § 2, p. 848; Laws 1959, c. 248, § 1, p. 857; Laws 1959, c. 249, § 7, p. 867; Laws 1976, LB 413, § 2; Laws 1981, LB 124, § 2; Laws 1984, LB 947, § 3; Laws 1986, LB 911, § 4; Laws 1988, LB 1089, § 14; Laws 1989, LB 781, § 10; Laws 1989, LB 780, § 9; Laws 1991, LB 344, § 36; Laws 1993, LB 183, § 12; Laws 1999, LB 267, § 9; Laws 2004, LB 485, § 21; Laws 2006, LB 845, § 2; Laws 2007, LB549, § 12.
Effective date September 1, 2007.

53-133 Retail, craft brewery, and microdistillery licenses; hearing; when held; procedure. (1) The commission shall set for hearing before it any application for a retail license, craft brewery license, or microdistillery license relative to which it has received:

(a) Within forty-five days after the date of receipt of such application by the city, village, or county clerk, a recommendation of denial from the city, village, or county;

(b) Within ten days after the receipt of a recommendation from the city, village, or county, or, if no recommendation is received, within forty-five days after the date of receipt of such application by the city, village, or county clerk, objections in writing by not less than three persons residing within such city, village, or county, protesting the issuance of the license. Withdrawal of the protest does not prohibit the commission from conducting a hearing based upon the protest as originally filed and making an independent finding as to whether the license should or should not be issued; or

(c) Within forty-five days after the date of receipt of such application by the city, village, or county clerk, objections by the commission or any duly appointed employee of the commission, protesting the issuance of the license.

(2) Hearings upon such applications shall be in the following manner: Notice indicating the time and place of such hearing shall be mailed to the applicant, the local governing body, and each individual protesting a license pursuant to subdivision (1)(b) of this section, by certified mail, return receipt requested, at least fifteen days prior to such hearing. The notice shall state that the commission will receive evidence for the purpose of determining whether to approve or deny the application. Mailing to the attorney of record of a party shall be deemed to fulfill the purposes of this section. The commission may receive evidence, including testimony and documentary evidence, and may hear and question witnesses concerning the application.

Source: Laws 1935, c. 116, § 84, p. 420; C.S.Supp.,1941, § 53-384; R.S.1943, § 53-133; Laws 1959, c. 249, § 8, p. 868; Laws 1961, c. 260, § 1, p. 774; Laws 1976, LB 413, § 3; Laws 1979, LB 224, § 2; Laws 1983, LB 213, § 13; Laws 1986, LB 911, § 5; Laws 1988, LB 550, § 2; Laws 1989, LB 781, § 11; Laws 1993, LB 183, § 13; Laws 1999, LB 267, § 10; Laws 2004, LB 485, § 22; Laws 2007, LB549, § 13.
Effective date September 1, 2007.

53-134 Retail, craft brewery, and microdistillery licenses; city and village governing bodies; county boards; powers, functions, and duties. The local governing body of any city or village with respect to licenses within its corporate limits and the local governing body of any county with respect to licenses not within the corporate limits of any

city or village but within the county shall have the following powers, functions, and duties with respect to retail, craft brewery, and microdistillery licenses:

(1) To cancel or revoke for cause retail, craft brewery, or microdistillery licenses to sell or dispense alcoholic liquor issued to persons for premises within its jurisdiction, subject to the right of appeal to the commission;

(2) To enter or to authorize any law enforcement officer to enter at any time upon any premises licensed under the Nebraska Liquor Control Act to determine whether any provision of the act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regulation adopted by the local governing body has been or is being violated and at such time examine the premises of such licensee in connection with such determination;

(3) To receive a signed complaint from any citizen within its jurisdiction that any provision of the act, any rule or regulation adopted and promulgated pursuant to the act, or any ordinance, resolution, rule, or regulation relating to alcoholic liquor has been or is being violated and to act upon such complaints in the manner provided in the act;

(4) To receive retail license fees, craft brewery license fees, and microdistillery license fees as provided in section 53-124 and pay the same, after the license has been delivered to the applicant, to the city, village, or county treasurer;

(5) To examine or cause to be examined any applicant or any retail licensee, craft brewery licensee, or microdistillery licensee upon whom notice of cancellation or revocation has been served as provided in the act, to examine or cause to be examined the books and records of any applicant or licensee, and to hear testimony and to take proof for its information in the performance of its duties. For purposes of obtaining any of the information desired, the local governing body may authorize its agent or attorney to act on its behalf;

(6) To cancel or revoke on its own motion any license if, upon the same notice and hearing as provided in section 53-134.04, it determines that the licensee has violated any of the provisions of the act or any valid and subsisting ordinance, resolution, rule, or regulation duly enacted, adopted, and promulgated relating to alcoholic liquor. Such order of cancellation or revocation may be appealed to the commission within thirty days after the date of the order by filing a notice of appeal with the commission. The commission shall handle the appeal in the manner provided for hearing on an application in section 53-133; and

(7) Upon receipt from the commission of the notice and copy of application as provided in section 53-131, to fix a time and place for a hearing at which the local governing body shall receive evidence, either orally or by affidavit from the applicant and any other person, bearing upon the propriety of the issuance of a license. Notice of the time and place of such hearing shall be published in a legal newspaper in or of general circulation in such city, village, or county one time not less than seven and not more than fourteen days before the time of the hearing. Such notice shall include, but not be limited to, a statement that all persons desiring to give evidence before the local governing body in support of or in protest against the issuance of such license may do so at the time of the hearing. Such hearing shall be held not more than forty-five days after the date of receipt of the notice from the commission, and after

such hearing the local governing body shall cause to be recorded in the minute record of their proceedings a resolution recommending either issuance or refusal of such license. The clerk of such city, village, or county shall mail to the commission by first-class mail, postage prepaid, a copy of the resolution which shall state the cost of the published notice, except that failure to comply with this provision shall not void any license issued by the commission. If the commission refuses to issue such a license, the cost of publication of notice shall be paid by the commission from the security for costs.

Source: Laws 1935, c. 116, § 85, p. 421; C.S.Supp.,1941, § 53-385; R.S.1943, § 53-134; Laws 1949, c. 169, § 1(1), p. 447; Laws 1959, c. 249, § 9, p. 868; Laws 1967, c. 332, § 9, p. 888; Laws 1983, LB 213, § 14; Laws 1984, LB 947, § 4; Laws 1986, LB 911, § 6; Laws 1988, LB 550, § 3; Laws 1988, LB 352, § 92; Laws 1988, LB 1089, § 15; Laws 1989, LB 781, § 12; Laws 1989, LB 780, § 10; Laws 1991, LB 344, § 37; Laws 1993, LB 183, § 14; Laws 1999, LB 267, § 11; Laws 2001, LB 278, § 8; Laws 2004, LB 485, § 23; Laws 2007, LB549, § 14.
Effective date September 1, 2007.

53-134.03 Retail, craft brewery, and microdistillery licenses; regulation by cities and villages. The governing bodies of cities and villages are authorized to regulate by ordinance, not inconsistent with the Nebraska Liquor Control Act, the business of all retail, craft brewery, or microdistillery licensees carried on within the corporate limits of the city or village.

Source: Laws 1935, c. 116, § 104, p. 429; C.S.Supp.,1941, § 53-3,104; R.S.1943, § 53-147; Laws 1980, LB 848, § 11; Laws 1989, LB 781, § 14; R.S.Supp.,1990, § 53-147; Laws 1991, LB 344, § 38; Laws 1993, LB 183, § 16; Laws 1999, LB 267, § 12; Laws 2004, LB 485, § 24; Laws 2007, LB549, § 15.
Effective date September 1, 2007.

(f) TAX

53-163 Commission; rounding of amounts on returns or reports; authorized. When the commission finds that the administration of the state alcohol excise tax laws might be more efficiently and economically conducted, the commission may require or allow for rounding of all amounts on returns or reports, including amounts of tax. Amounts shall be rounded to the nearest dollar with amounts ending in fifty cents or more rounded to the next highest dollar.

Source: Laws 2007, LB578, § 2.
Effective date September 1, 2007.

53-164.01 Alcoholic liquor; tax; payment; report; penalty; bond; sale to instrumentality of armed forces; credit for tax paid. Payment of the tax provided for in section 53-160 on alcoholic liquor shall be paid by the manufacturer or wholesaler as follows:

(1)(a) All manufacturers or wholesalers, except farm winery producers, whether inside or outside this state shall, on or before the twenty-fifth day of each calendar month following the month in which shipments were made, submit a report to the commission upon forms furnished by the commission showing the total amount of alcoholic liquor in gallons or

fractional parts thereof shipped by such manufacturer or wholesaler, whether inside or outside this state, during the preceding calendar month;

(b) All beer wholesalers shall, on or before the twenty-fifth day of each calendar month following the month in which shipments were made, submit a report to the commission upon forms furnished by the commission showing the total amount of beer in gallons or fractional parts thereof shipped by all manufacturers, whether inside or outside this state, during the preceding calendar month to such wholesaler;

(c) Farm winery producers shall, on or before the twenty-fifth day of each calendar month following the month in which wine was packaged or bottled for sale, submit a report to the commission upon forms furnished by the commission showing the total amount of wine in gallons or fractional parts thereof packaged or bottled by such producer during the preceding calendar month;

(d) A craft brewery shall, on or before the twenty-fifth day of each calendar month following the month in which the beer was produced for sale, submit a report to the commission on forms furnished by the commission showing the total amount of beer in gallons or fractional parts thereof produced for sale by the craft brewery during the preceding calendar month;

(e) A microdistillery shall, on or before the twenty-fifth day of each calendar month following the month in which the distilled liquor was produced for sale, submit a report to the commission on forms furnished by the commission showing the total amount of distilled liquor in gallons or fractional parts thereof produced for sale by the microdistillery during the preceding calendar month; and

(f) Reports submitted pursuant to subdivision (a), (b), or (c) of this subdivision shall also contain a statement of the total amount of alcoholic liquor, except beer, in gallons or fractional parts thereof shipped to licensed retailers inside this state and such other information as the commission may require;

(2) The wholesaler or farm winery producer shall at the time of the filing of the report pay to the commission the tax due on alcoholic liquor, except beer, shipped to licensed retailers inside this state at the rate fixed in accordance with section 53-160. The tax due on beer shall be paid by the wholesaler on beer shipped from all manufacturers;

(3) The tax imposed pursuant to section 53-160 shall be due on the date the report is due less a discount of one percent of the tax on alcoholic liquor for submitting the report and paying the tax in a timely manner. The discount shall be deducted from the payment of the tax before remittance to the commission and shall be shown in the report to the commission as required in this section. If the tax is not paid within the time provided in this section, the discount shall not be allowed and shall not be deducted from the tax;

(4) If the report is not submitted by the twenty-fifth day of the calendar month or if the tax is not paid to the commission by the twenty-fifth day of the calendar month, the following penalties shall be assessed on the amount of the tax: One to five days late, three percent; six to ten days late, six percent; and over ten days late, ten percent. In addition, interest on the tax shall be collected at the rate of one percent per month, or fraction of a month, from the date the tax became due until paid;

(5) No tax shall be levied or collected on alcoholic liquor manufactured inside this state and shipped or transported outside this state for sale and consumption outside this state;

(6) In order to insure the payment of all state taxes on alcoholic liquor, together with interest and penalties, persons required to submit reports and payment of the tax shall, at the time of application for a license under section 53-124, enter into a surety bond with corporate surety, both the bond form and surety to be approved by the commission. Subject to the limitations specified in this subdivision, the amount of the bond required of any taxpayer shall be fixed by the commission and may be increased or decreased by the commission at any time. In fixing the amount of the bond, the commission shall require a bond equal to the amount of the taxpayer's estimated maximum monthly excise tax ascertained in a manner as determined by the commission. Nothing in this section shall prevent or prohibit the commission from accepting and approving bonds which run for a term longer than the license period. The amount of a bond required of any one taxpayer shall not be less than one thousand dollars. The bonds required by this section shall be filed with the commission; and

(7) When a manufacturer or wholesaler sells and delivers alcoholic liquor upon which the tax has been paid to any instrumentality of the armed forces of the United States engaged in resale activities as provided in section 53-160.01, the manufacturer or wholesaler shall be entitled to a credit in the amount of the tax paid in the event no tax is due on such alcoholic liquor as provided in such section. The amount of the credit, if any, shall be deducted from the tax due on the following monthly report and subsequent reports until liquidated.

Source: Laws 1955, c. 201, § 3, p. 571; Laws 1959, c. 247, § 6, p. 853; Laws 1959, c. 251, § 1, p. 880; Laws 1967, c. 334, § 1, p. 892; Laws 1972, LB 66, § 4; Laws 1973, LB 111, § 8; Laws 1979, LB 224, § 5; Laws 1981, LB 124, § 3; Laws 1983, LB 213, § 18; Laws 1985, LB 279, § 10; Laws 1985, LB 359, § 3; Laws 1988, LB 1089, § 23; Laws 1989, LB 777, § 1; Laws 1989, LB 780, § 12; Laws 1991, LB 344, § 47; Laws 1991, LB 582, § 3; Laws 1994, LB 1292, § 8; Laws 1996, LB 750, § 10; Laws 2006, LB 1003, § 3; Laws 2007, LB549, § 16.
Effective date September 1, 2007.

(h) KEG SALES

53-167.03 Keg identification number; prohibited acts; violation; penalty; deposit. (1) Any person who unlawfully tampers with, alters, or removes the keg identification number from a beer container or is in possession of a beer container described in section 53-167.02 with an altered or removed keg identification number after such container has been taken from the licensed premises pursuant to a retail sale and before its return to such licensed premises or other place where returned kegs are accepted shall be guilty of a Class III misdemeanor.

(2) A licensee may require a deposit of not more than the replacement cost of the container described in section 53-167.02 from a person purchasing beer for consumption off the premises. Such deposit may be retained by the licensee, in the amount of actual damages, if upon return the container or any associated equipment is damaged or if the

keg identification number has been unlawfully tampered with, altered, or removed and such tampering, alteration, or removal has been reported to a law enforcement officer.

Source: Laws 1993, LB 332, § 4; Laws 2002, LB 1126, § 5; Laws 2007, LB573, § 10.
Operative date September 1, 2007.

(i) PROHIBITED ACTS

53-169 Manufacturer or wholesaler; craft brewery or microdistillery licensee; limitations. (1) No manufacturer or wholesaler shall directly or indirectly: (a) Pay for any license to sell alcoholic liquor at retail or advance, furnish, lend, or give money for payment of such license; (b) purchase or become the owner of any note, mortgage, or other evidence of indebtedness of such licensee or any form of security therefor; (c) be interested in the ownership, conduct, or operation of the business of any licensee authorized to sell alcoholic liquor at retail; or (d) be interested directly or indirectly or as owner, part owner, lessee, or lessor thereof in any premises upon which alcoholic liquor is sold at retail.

(2) This section shall not apply to the holder of a farm winery license. The holder of a craft brewery license shall have the privileges and duties listed in section 53-123.14 with respect to the manufacture, distribution, and retail sale of beer, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a craft brewery license to engage in the wholesale distribution of beer. The holder of a microdistillery license shall have the privileges and duties listed in section 53-123.16 with respect to the manufacture of alcoholic liquor, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a microdistillery license to engage in the wholesale distribution of alcoholic liquor.

Source: Laws 1935, c. 116, § 30, p. 396; C.S.Supp., 1941, § 53-330; R.S. 1943, § 53-169; Laws 1947, c. 187, § 2, p. 619; Laws 1953, c. 182, § 3, p. 574; Laws 1961, c. 258, § 5, p. 765; Laws 1971, LB 751, § 5; Laws 1981, LB 483, § 3; Laws 1985, LB 279, § 11; Laws 1985, LB 183, § 5; Laws 1988, LB 1089, § 24; Laws 1991, LB 344, § 54; Laws 1996, LB 750, § 11; Laws 2007, LB549, § 17.
Effective date September 1, 2007.

53-169.01 Manufacturer; interest in licensed wholesaler; prohibitions; exceptions. No manufacturer of alcoholic liquor holding a manufacturer's license under section 53-123.01 and no manufacturer of alcoholic liquor outside this state manufacturing alcoholic liquor, except beer, shall, directly or indirectly, as owner or part owner, or through a subsidiary or affiliate, or by any officer, director, or employee thereof, or by stock ownership, interlocking directors, trusteeship, loan, mortgage, or lien on any personal or real property, or as guarantor, endorser, or surety, be interested in the ownership, conduct, operation, or management of any alcoholic liquor wholesaler holding an alcoholic liquor wholesale license, except beer, under section 53-123.02 unless such interest in the licensed wholesaler was acquired or became effective prior to January 1, 2007.

No manufacturer of alcoholic liquor holding a manufacturer's license under section 53-123.01 and no manufacturer of alcoholic liquor outside this state manufacturing alcoholic liquor, except beer, shall be interested directly or indirectly, as lessor or lessee, as owner or part owner, or through a subsidiary or affiliate, or by any officer, director, or employee

thereof, or by stock ownership, interlocking directors, or trusteeship in the premises upon which the place of business of an alcoholic liquor wholesaler holding an alcoholic liquor wholesale license, except beer, under section 53-123.02 is located, established, conducted, or operated in whole or in part unless such interest was acquired or became effective prior to April 17, 1947.

Source: Laws 1935, c. 116, § 30, p. 396; C.S.Supp., 1941, § 53-330; R.S. 1943, § 53-169; Laws 1947, c. 187, § 2, p. 619; Laws 1953, c. 182, § 4, p. 575; Laws 1959, c. 250, § 2, p. 876; Laws 1969, c. 441, § 3, p. 1477; Laws 1991, LB 344, § 55; Laws 2007, LB578, § 3.
Effective date September 1, 2007.

53-171 Licenses; issuance of more than one kind to same person; when unlawful; craft brewery or microdistillery licensee; limitations. No person licensed as a manufacturer or wholesaler of alcoholic liquor shall be permitted to receive any retail license at the same time. No person licensed as a retailer of alcoholic liquor shall be permitted to receive any manufacturer's or wholesale license at the same time. This section shall not apply to the holder of a farm winery license. The holder of a craft brewery license shall have the privileges and duties listed in section 53-123.14 with respect to the manufacture, distribution, and retail sale of beer, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a craft brewery license to engage in the wholesale distribution of beer. The holder of a microdistillery license shall have the privileges and duties listed in section 53-123.16 with respect to the manufacture of alcoholic liquor, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a microdistillery license to engage in the wholesale distribution of alcoholic liquor.

Source: Laws 1935, c. 116, § 30, p. 397; C.S.Supp., 1941, § 53-330; R.S. 1943, § 53-171; Laws 1953, c. 182, § 1, p. 573; Laws 1969, c. 441, § 4, p. 1478; Laws 1985, LB 279, § 12; Laws 1988, LB 1089, § 25; Laws 1991, LB 344, § 56; Laws 1996, LB 750, § 12; Laws 2007, LB549, § 18.
Effective date September 1, 2007.

53-180.02 Minor; prohibited acts; exception; governing bodies; powers. Except as provided in section 53-168.06, no minor may sell, dispense, consume, or have in his or her possession or physical control any alcoholic liquor in any tavern or in any other place, including public streets, alleys, roads, or highways, upon property owned by the State of Nebraska or any subdivision thereof, or inside any vehicle while in or on any other place, including, but not limited to, the public streets, alleys, roads, or highways, or upon property owned by the State of Nebraska or any subdivision thereof, except that a minor may consume, possess, or have physical control of alcoholic liquor as a part of a bona fide religious rite, ritual, or ceremony or in his or her permanent place of residence.

The governing bodies of counties, cities, and villages shall have the power to, and may by applicable resolution or ordinance, regulate, suppress, and control the transportation, consumption, or knowing possession of or having under his or her control beer or other alcoholic liquor in or transported by any motor vehicle, by any person under twenty-one years of age, and may provide penalties for violations of such resolution or ordinance.

Source: Laws 1951, c. 174, § 1(3), p. 664; Laws 1955, c. 205, § 1, p. 584; Laws 1957, c. 233, § 1, p. 792; Laws 1965, c. 323, § 1, p. 915; Laws 1967, c. 337, § 1, p. 904; Laws 1969, c. 440, § 2, p. 1473; Laws 1980, LB 221, § 3; Laws 1980, LB 848, § 18; Laws 1981, LB 124, § 4; Laws 1984, LB 56, § 2; Laws 1991, LB 344, § 62; Laws 2001, LB 114, § 4; Laws 2007, LB573, § 11.
Operative date September 1, 2007.

53-188 Governmental subdivision under prohibition; effect on licenses. No person shall operate a craft brewery or microdistillery or sell alcoholic liquor at retail, and the commission shall not grant, issue, or cause to be granted or issued any license to operate a craft brewery or microdistillery or to sell alcoholic liquor at retail, within the limits of any governmental subdivision of this state while a prohibition against such sales arising under sections 53-121 and 53-122 or otherwise as provided in the Nebraska Liquor Control Act is in effect, and any such license granted or issued in violation thereof shall be void. This section shall not prohibit the issuance of a manufacturer's or wholesale license in accordance with law by the commission in such prohibited territory.

Source: Laws 1935, c. 116, § 59, p. 408; C.S.Supp.,1941, § 53-359; R.S.1943, § 53-188; Laws 1988, LB 1089, § 28; Laws 1991, LB 344, § 68; Laws 1996, LB 750, § 13; Laws 2007, LB549, § 19.
Effective date September 1, 2007.

(k) PROSECUTION AND ENFORCEMENT

53-1,115 Proceedings before commission; service upon parties; rehearings; costs. (1) A copy of the rule, regulation, order, or decision of the commission denying an application or suspending, canceling, or revoking a license or of any notice required by any proceeding before it, certified under the seal of the commission, shall be served upon each party of record to the proceeding before the commission. Service upon any attorney of record for any such party shall be deemed to be service upon such party. Each party appearing before the commission shall enter his or her appearance and indicate to the commission his or her address for such service. The mailing of a copy of any rule, regulation, order, or decision of the commission or of any notice by the commission, in the proceeding, to such party at such address shall be deemed to be service upon such party.

(2) Within thirty days after the service of any rule, regulation, order, or decision of the commission suspending, canceling, or revoking any license upon any party to the proceeding, as provided for by subsection (1) of this section, such party may apply for a rehearing with respect to any matters determined by the commission. The commission shall receive and consider such application for a rehearing within thirty days after its filing with the executive director of the commission. If such application for rehearing is granted, the commission shall proceed as promptly as possible to consider the matters presented by such application. No appeal shall be allowed from any decision of the commission except as provided in section 53-1,116.

(3) Upon final disposition of any proceeding, costs shall be paid by the party or parties against whom a final decision is rendered. Costs may be taxed or retaxed to local governing bodies as well as individuals. Only one rehearing referred to in subsection (2) of this section shall be granted by the commission on application of any one party.

(4) For purposes of this section, party of record means:

(a) In the case of an administrative proceeding before the commission on the application for a retail, craft brewery, or microdistillery license:

(i) The applicant;

(ii) Each individual protesting the issuance of such license pursuant to subdivision (1)(b) of section 53-133;

(iii) The local governing body if it is entering an appearance to protest the issuance of the license or if it is requesting a hearing pursuant to subdivision (1)(c) of section 53-133; and

(iv) The commission;

(b) In the case of an administrative proceeding before a local governing body to cancel or revoke a retail, craft brewery, or microdistillery license:

(i) The licensee; and

(ii) The local governing body; and

(c) In the case of an administrative proceeding before the commission to suspend, cancel, or revoke a retail, craft brewery, or microdistillery license:

(i) The licensee; and

(ii) The commission.

Source: Laws 1989, LB 781, § 15; Laws 1993, LB 183, § 17; Laws 1999, LB 267, § 16; Laws 2004, LB 485, § 30; Laws 2007, LB549, § 20.
Effective date September 1, 2007.

ARTICLE 3

NEBRASKA GRAPE AND WINERY BOARD

Section.

53-304. Winery; payments required; Winery and Grape Producers Promotional Fund; created; use; investment.

53-304 Winery; payments required; Winery and Grape Producers Promotional Fund; created; use; investment. Each Nebraska winery shall pay to the Nebraska Liquor Control Commission twenty dollars for every one hundred sixty gallons of juice produced or received by its facility. Gifts, grants, or bequests may be received for the support of the Nebraska Grape and Winery Board. Funds paid pursuant to the charge imposed by this section and funds received pursuant to subsection (4) of section 53-123.15 and from gifts, grants, or bequests shall be remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund which is hereby created. For administrative purposes, the fund shall be located in the Department of Agriculture. All revenue credited to the fund pursuant to the charge imposed by this section and excise taxes collected pursuant to section 2-5603 and any funds received as gifts, grants, or bequests and credited to the fund shall be used by the department, at the direction of and in cooperation with the board, to develop and maintain programs for the research and advancement of the growing, selling, marketing, and promotion

of grapes, fruits, berries, honey, and other agricultural products and their byproducts grown and produced in Nebraska for use in the wine industry. Such expenditures may include, but are not limited to, all necessary funding for the employment of experts in the fields of viticulture and enology, as deemed necessary by the board, and programs aimed at improving the promotion of all varieties of wines, grapes, fruits, berries, honey, and other agricultural products and their byproducts grown and produced in Nebraska for use in the wine industry.

Funds credited to the fund shall be used for no other purposes than those stated in this section and any transfers authorized pursuant to section 2-5604. Any funds not expended during a fiscal year may be maintained in the fund for distribution or expenditure during subsequent fiscal years. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2000, LB 477, § 4; Laws 2003, LB 536, § 4; Laws 2007, LB441, § 7.
Effective date September 1, 2007.

Cross Reference

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 4

MINOR ALCOHOLIC LIQUOR LIABILITY ACT

Section.

- 53-401. Act, how cited.
- 53-402. Purposes of act.
- 53-403. Terms, defined.
- 53-404. Cause of action authorized.
- 53-405. Defense.
- 53-406. Limitation on cause of action.
- 53-407. Damages.
- 53-408. Statute of limitation.
- 53-409. Effect of settlement and release; offset; joint and several liability; right of contribution.

53-401 Act, how cited. Sections 53-401 to 53-409 shall be known and may be cited as the Minor Alcoholic Liquor Liability Act.

Source: Laws 2007, LB573, § 1.
Operative date January 1, 2008.

53-402 Purposes of act. The purposes of the Minor Alcoholic Liquor Liability Act are to prevent intoxication-related traumatic injuries, deaths, and other damages and to establish a legal basis for obtaining compensation for persons suffering damages as a result of provision or service of alcoholic liquor to minors under circumstances described in the act.

Source: Laws 2007, LB573, § 2.
Operative date January 1, 2008.

53-403 Terms, defined. For purposes of the Minor Alcoholic Liquor Liability Act:

- (1) Alcoholic liquor has the definition found in section 53-103;
- (2) Intoxication means an impairment of a person's mental or physical faculties as a result of his or her use of alcoholic liquor so as to diminish the person's ability to think and act in the manner of a reasonably prudent person in full possession of his or her faculties using reasonable care under the same or similar circumstances;
- (3) Licensee means a person holding a license issued under the Nebraska Liquor Control Act to sell alcoholic liquor at retail;
- (4) Minor has the definition found in section 53-103;
- (5) Retailer means a licensee, any agent or employee of the licensee acting within the scope and course of his or her employment, or any person who at the time of the events leading to an action under the Minor Alcoholic Liquor Liability Act was required to have a license issued under the Nebraska Liquor Control Act in order to sell alcoholic liquor at retail;
- (6) Service of alcoholic liquor means any sale, gift, or other manner of conveying possession of alcoholic liquor; and
- (7) Social host means a person who knowingly allows consumption of alcoholic liquor in his or her home or on property under his or her control by one or more minors. Social host does not include (a) a parent providing alcoholic liquor to only his or her minor child and to no other minors or (b) a religious corporation, organization, association, or society, and any authorized representative of such religious corporation, organization, association, or society, dispensing alcoholic liquor as part of any bona fide religious rite, ritual, or ceremony.

Source: Laws 2007, LB573, § 3.
Operative date January 1, 2008.

Cross Reference

Nebraska Liquor Control Act, see section 53-101.

53-404 Cause of action authorized. Any person who sustains injury or property damage, or the estate of any person killed, as a proximate result of the negligence of an intoxicated minor shall have, in addition to any other cause of action available in tort, a cause of action against:

- (1) A social host who allowed the minor to consume alcoholic liquor in the social host's home or on property under his or her control;
- (2) Any person who procured alcoholic liquor for the minor, other than with the permission and in the company of the minor's parent or guardian, when such person knew or should have known that the minor was a minor; or

(3) Any retailer who sold alcoholic liquor to the minor. The absolute defenses found in section 53-180.07 shall be available to a retailer in any cause of action brought under this section.

Source: Laws 2007, LB573, § 4.
Operative date January 1, 2008.

53-405 Defense. It shall be a complete defense in any action brought under the Minor Alcoholic Liquor Liability Act that the intoxication did not contribute to the negligent conduct.

Source: Laws 2007, LB573, § 5.
Operative date January 1, 2008.

53-406 Limitation on cause of action. No cause of action under the Minor Alcoholic Liquor Liability Act shall be available to the intoxicated person, his or her estate, or anyone whose claim is based upon injury to or death of the intoxicated person.

Source: Laws 2007, LB573, § 6.
Operative date January 1, 2008.

53-407 Damages. In an action under the Minor Alcoholic Liquor Liability Act, damages may be awarded for all actual damages, including damages for wrongful death, as in other tort actions.

Source: Laws 2007, LB573, § 7.
Operative date January 1, 2008.

53-408 Statute of limitation. Notwithstanding any other provision of law, any action under the Minor Alcoholic Liquor Liability Act shall be brought within four years after the occurrence causing the injury, property damage, or death.

Source: Laws 2007, LB573, § 8.
Operative date January 1, 2008.

53-409 Effect of settlement and release; offset; joint and several liability; right of contribution. (1) A plaintiff's settlement and release of one defendant in an action under the Minor Alcoholic Liquor Liability Act does not bar claims against any other defendant.

(2) The amount paid to a plaintiff in consideration for the settlement and release of a defendant in an action under the act shall be offset against all other subsequent judgments awarded to the plaintiff.

(3) The retailer, licensee, social host, person procuring alcoholic liquor for a minor, and minor who are defendants in an action brought under the act are jointly and severally liable in such action as provided in section 25-21,185.10 for those who act in concert to cause harm.

(4) In an action based on the act, the retailer, licensee, social host, person procuring alcoholic liquor for a minor, and minor shall have a right of contribution and not a right of subrogation from one another.

Source: Laws 2007, LB573, § 9.
Operative date January 1, 2008.

CHAPTER 54

LIVESTOCK

Article.

1. Livestock Brand Act. 54-191 to 54-194.
3. Herd Laws. 54-311.
6. Dogs and Cats.
 - (c) Commercial Dog and Cat Operator Inspection Act. 54-625 to 54-643.
7. Protection of Health.
 - (a) General Powers and Duties of Department of Agriculture. 54-703.
 - (b) Bovine Tuberculosis Act. 54-706 to 54-722.
 - (d) General Provisions. 54-744.01, 54-747.
24. Livestock Waste Management Act. 54-2423, 54-2429.

ARTICLE 1

LIVESTOCK BRAND ACT

Section.

- 54-191. Nebraska Brand Committee; created; members; terms; vacancy; bond or insurance; expenses; purpose.
- 54-192. Nebraska Brand Committee; employees; director; duties; brand recorder; grievance procedure.
- 54-194. Documents; signature and seal requirements.

54-191 Nebraska Brand Committee; created; members; terms; vacancy; bond or insurance; expenses; purpose. The Nebraska Brand Committee is hereby created. Beginning August 28, 2007, the brand committee shall consist of five members appointed by the Governor. At least three appointed members shall be active cattlemen and at least one appointed member shall be an active cattle feeder. The Secretary of State and the Director of Agriculture, or their designees, shall be nonvoting, ex officio members of the brand committee. The appointed members shall be owners of cattle within the brand inspection area, shall reside within the brand inspection area, shall be owners of Nebraska-recorded brands, and shall be persons whose principal business and occupation is the raising or feeding of cattle within the brand inspection area. The members of the brand committee shall elect a chairperson and vice-chairperson from among its appointed members during the first meeting held after September 1 each calendar year. A member may be reelected to serve as chairperson or vice-chairperson. The Secretary of State shall remain a member of the brand committee in the capacity as chairperson of the brand committee until a chairperson is elected as provided in this section. The terms of the members shall be four-year, staggered terms. At the expiration of the term of an appointed member, the Governor shall appoint a successor. The members of the brand committee serving on August 28, 2007, shall be considered appointed to serve the remainder of their terms. The Governor shall complete any additional appointment of

members as necessary to fulfill the membership of the brand committee as prescribed by Laws 2007, LB 422, on or before August 28, 2007. If there is a vacancy on the brand committee, the Governor shall fill such vacancy by appointing a member to serve during the unexpired term of the member whose office has become vacant. The action of a majority of the members shall be deemed the action of the brand committee. No appointed member shall hold any elective or appointive state or federal office while serving as a member of the brand committee. Each member and each brand committee employee who collects or who is the custodian of any funds shall be bonded or insured as required under section 11-201. The appointed members of the brand committee shall be paid their actual and necessary traveling expenses in attending meetings of the brand committee or in performing any other duties that are prescribed in the Livestock Brand Act or section 54-415, as provided for in sections 81-1174 to 81-1177.

The purpose of the Nebraska Brand Committee is to protect Nebraska brand and livestock owners from the theft of livestock through established brand recording, brand inspection, and livestock theft investigation.

Source: Laws 1999, LB 778, § 22; Laws 2004, LB 884, § 26; Laws 2007, LB422, § 1.
Effective date March 8, 2007.

54-192 Nebraska Brand Committee; employees; director; duties; brand recorder; grievance procedure. (1) The Nebraska Brand Committee shall employ such employees as may be necessary to properly carry out the Livestock Brand Act and section 54-415, fix the salaries of such employees, and make such expenditures as are necessary to properly carry out such act and section. Employees of the brand committee shall receive mileage computed at the rate provided in section 81-1176. The brand committee shall select and designate a location or locations where the brand committee shall keep and maintain an office and where records of the brand inspection and investigation proceedings, transactions, communications, brand registrations, and official acts shall be kept.

(2) The brand committee shall employ a director as the executive officer of the brand committee, and the director shall also be the chief brand inspector, the chief investigator, and, for administrative purposes, the brand committee head. The director shall keep a record of all proceedings, transactions, communications, and official acts of the brand committee, shall be custodian of all records of the brand committee, and shall perform such other duties as may be required by the brand committee. The director shall call a meeting at the direction of the chairperson of the brand committee, or in his or her absence the vice-chairperson, or upon the written request of two or more members of the brand committee. The director shall have supervisory authority to direct and control all full-time and part-time employees of the brand committee. This authority allows the director to hire employees as are needed on an interim basis subject to approval or confirmation by the brand committee for regular employment. The director may place employees on probation and may discharge an employee. In the absence of the director, by reason of illness, vacation, or official business away from the committee's

headquarters, the assistant director shall have similar authority as outlined in this section for the director.

(3) The brand committee shall employ a brand recorder who shall be responsible for the processing of all applications for new livestock brands, the transfer of ownership of existing livestock brands, the maintenance of accurate and permanent records relating to livestock brands, and such other duties as may be required by the brand committee.

(4) If any employee of the brand committee after having been disciplined, placed on probation, or having had his or her services terminated desires to have a hearing before the entire brand committee, such a hearing shall be granted as soon as is practicable and convenient for all persons concerned. The request for such a hearing shall be made in writing by the employee alleging the grievance and shall be directed to the director. After hearing all testimony surrounding the grievance of such employee, the brand committee, at its discretion, may approve, rescind, nullify, or amend all actions as previously taken by the director.

Source: Laws 1999, LB 778, § 23; Laws 2007, LB422, § 2.
Effective date March 8, 2007.

Cross Reference

Motor vehicles of deputized employees exempt from state marking requirements, see section 81-1021.

54-194 Documents; signature and seal requirements. The director of the Nebraska Brand Committee or the chairperson of the brand committee shall have the authority to sign all certificates and other documents that may by law require certification by signature. Such documents shall include, but not be limited to, new brand certificates, brand transfer certificates, duplicate brand certificates, and brand renewal receipts. A facsimile of the brand committee seal and the signature of the brand recorder shall also be placed on all brand certificates.

Source: Laws 1999, LB 778, § 25; Laws 2007, LB422, § 3.
Effective date March 8, 2007.

ARTICLE 3

HERD LAWS

Section.

54-311. Wells and pitfalls; prohibited acts.

54-311 Wells and pitfalls; prohibited acts. It shall be unlawful for the owner or holder of any real estate in the State of Nebraska to leave uncovered any well or other pitfall into which any person or animal may fall or receive injury. Every pitfall shall be filled, adequately covered, or enclosed so as not to constitute a safety hazard. Every well not in use shall be decommissioned or properly placed in inactive status in accordance with the Water Well Standards and Contractors' Practice Act so as not to constitute a safety hazard.

Source: Laws 1897, c. 6, § 1, p. 46; R.S.1913, § 105; C.S.1922, § 113; C.S.1929, § 54-310; Laws 2003, LB 245, § 9; Laws 2007, LB463, § 1173.
Operative date December 1, 2008.

Cross Reference

Abandoned water wells:

Duty of licensed water well contractor to plug, see section 46-1234.

Duty of owner to decommission and notify Department of Natural Resources, see section 46-602.

Penalty for failure to decommission, see section 46-1240.

Standards for decommissioning, see section 46-1227.

Water Well Standards and Contractors' Practice Act, see section 46-1201.

ARTICLE 6

DOGS AND CATS

(c) COMMERCIAL DOG AND CAT OPERATOR INSPECTION ACT

Section.

54-625. Act, how cited.

54-627. License requirements; fees; renewal.

54-628. Inspection program.

54-629. Rules and regulations.

54-630. Application; denial; appeal.

54-631. Licensee; duties; disciplinary actions.

54-632. Notice or order; service requirements; hearing; appeal.

54-633. Enforcement powers; administrative fine.

54-643. Administrative fines; disposition; lien; collection.

(c) COMMERCIAL DOG AND CAT OPERATOR INSPECTION ACT

54-625 Act, how cited. Sections 54-625 to 54-643 shall be known and may be cited as the Commercial Dog and Cat Operator Inspection Act.

Source: Laws 2000, LB 825, § 1; Laws 2003, LB 274, § 1; Laws 2006, LB 856, § 13; Laws 2007, LB12, § 1.
Effective date September 1, 2007.

54-627 License requirements; fees; renewal. (1) A person shall not operate as a commercial breeder, a dealer, a boarding kennel, an animal control facility, or an animal shelter unless the person obtains the appropriate license as a commercial breeder, dealer, boarding kennel, animal control facility, or animal shelter. A person shall not operate as a pet shop unless the person obtains a license as a pet shop. A pet shop shall only be subject to the Commercial Dog and Cat Operator Inspection Act and the rules and regulations adopted and promulgated pursuant thereto in any area or areas of the establishment used for the keeping and selling of pet animals.

(2) An applicant for a license shall submit an application for the appropriate license to the department, on a form prescribed by the department, together with the annual license

fee. Such fee is nonreturnable. Upon receipt of the application and annual license fee and upon completion of a qualifying inspection if required pursuant to section 54-630 for an initial license applicant or if a qualifying inspection is deemed appropriate by the department before a license is issued for any other applicant, the appropriate license may be issued by the department. Such license shall not be transferable to another person or location.

(3)(a) Except as otherwise provided in this subsection, the annual license fee shall be determined according to the following fee schedule based upon the daily average number of dogs or cats housed by the licensee over the previous annual licensure period:

- (i) Ten or fewer dogs or cats, one hundred fifty dollars;
- (ii) Eleven to fifty dogs or cats, two hundred dollars; and
- (iii) More than fifty dogs or cats, two hundred fifty dollars.

(b) The initial license fee for any person required to be licensed pursuant to the act shall be one hundred twenty-five dollars.

(c) The annual license fee for a licensee that does not house dogs or cats shall be one hundred fifty dollars.

(d) The fees charged under this subsection may be increased or decreased by the director after a public hearing is held outlining the reason for any proposed change in the fee. The maximum fee shall not exceed three hundred fifty dollars.

(4) A license to operate as a commercial breeder, a license to operate as a dealer, a license to operate as a boarding kennel, or a license to operate as a pet shop shall be renewed by filing with the department at least thirty days prior to April 1 of each year a renewal application and the annual license fee. A license to operate as an animal control facility or animal shelter shall be renewed by filing with the department at least thirty days prior to October 1 of each year a renewal application and the annual license fee. Failure to renew a license prior to the expiration of the license shall result in an additional fee of twenty dollars required upon application to renew such license.

Source: Laws 2000, LB 825, § 3; Laws 2003, LB 233, § 2; Laws 2003, LB 274, § 3; Laws 2004, LB 1002, § 2; Laws 2006, LB 856, § 14; Laws 2007, LB12, § 2.
Effective date September 1, 2007.

54-628 Inspection program. The department shall inspect all licensees at least once in a twenty-four-month period to determine whether the licensee is in compliance with the Commercial Dog and Cat Operator Inspection Act. Any additional inspector or other field personnel employed by the department to carry out inspections pursuant to the act that are funded through General Fund appropriations to the Bureau of Animal Industry shall be assigned to the Bureau of Animal Industry and shall be available for temporary reassignment as needed to other activities and functions of the Bureau of Animal Industry in the event of a livestock disease emergency or any other threat to livestock or public health. When an inspection produces evidence of a violation of the act or the rules and regulations of the department, a copy of a written report of the inspection and violations shown thereon, prepared by the inspector, shall be given to the applicant or licensee, together with written notice to comply within the time limit established by the department and set out in such notice. The

premises of the applicant or licensee shall be open for inspection. The department and any officer, agent, employee, or appointee of the department shall have the right to enter upon the premises of any person who has, or is suspected of having, any dog or cat thereon or any sanitation, housing, or other condition or practice that is in violation of the act.

Source: Laws 2000, LB 825, § 4; Laws 2007, LB12, § 3.
Effective date September 1, 2007.

54-629 Rules and regulations. The department shall adopt and promulgate rules and regulations to carry out the Commercial Dog and Cat Operator Inspection Act. The rules and regulations may include, but are not limited to, factors to be considered when the department imposes an administrative fine, provisions governing record-keeping and other requirements for persons required to have a license, and any other matter deemed necessary by the department to carry out the act. The department shall use as a guideline for the humane handling, care, treatment, and transportation of dogs and cats the standards of the Animal and Plant Health Inspection Service of the United States Department of Agriculture as set out in 9 C.F.R. 3.1 to 3.19.

Source: Laws 2000, LB 825, § 5; Laws 2007, LB12, § 4.
Effective date September 1, 2007.

54-630 Application; denial; appeal. Before the department approves an application for an initial license, an inspector of the department shall inspect the operation of the applicant to determine whether the applicant qualifies to hold a license pursuant to the Commercial Dog and Cat Operator Inspection Act. An applicant who qualifies shall be issued a license. An applicant who does not receive a license shall be afforded the opportunity for a hearing before the director or the director's designee to present evidence that the applicant is qualified to hold a license should a license be issued. All such hearings shall be in accordance with the Administrative Procedure Act.

Source: Laws 2000, LB 825, § 6; Laws 2007, LB12, § 5.
Effective date September 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

54-631 Licensee; duties; disciplinary actions. (1) A licensee under the Commercial Dog and Cat Operator Inspection Act shall comply with the act, the rules and regulations, and any order of the director issued pursuant thereto. The licensee shall not interfere with the department in the performance of its duties.

(2) A licensee may be put on probation requiring such licensee to comply with the conditions set out in an order of probation issued by the director, may be ordered to cease and desist due to a failure to comply, or may be ordered to pay an administrative fine pursuant to section 54-633 after:

(a) The director determines the licensee has not complied with subsection (1) of this section;

(b) The licensee is given written notice to comply and written notice of the right to a hearing to show cause why an order should not be issued; and

(c) The director finds that issuing an order is appropriate based on the hearing record or on the available information if the hearing is waived by the licensee.

(3) A license may be suspended after:

(a) The director determines the licensee has not complied with subsection (1) of this section;

(b) The licensee is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be suspended; and

(c) The director finds that issuing an order suspending the license is appropriate based on the hearing record or on the available information if the hearing is waived by the licensee.

(4) A license may be immediately suspended and the director may order the operation of the licensee closed prior to hearing when:

(a) The director determines that there is a significant threat to the health or safety of the dogs or cats harbored or owned by the licensee; and

(b) The licensee receives written notice to comply and written notice of the right to a hearing to show cause why the suspension should not be sustained. Within fifteen days after the suspension, the licensee may request in writing a date for a hearing, and the director shall consider the interests of the licensee when the director establishes the date and time of the hearing, except that no hearing shall be held sooner than is reasonable under the circumstances. When a licensee does not request a hearing date within the fifteen-day period, the director shall establish a hearing date and notify the licensee of the date and time of such hearing.

(5) A license may be revoked after:

(a) The director determines the licensee has committed serious, repeated, or multiple violations of any of the requirements of subsection (1) of this section;

(b) The licensee is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be revoked; and

(c) The director finds that issuing an order revoking the license is appropriate based on the hearing record or on the available information if the hearing is waived by the licensee.

(6) The operation of any licensee which has been suspended shall close and remain closed until the license is reinstated. Any operation for which the license has been revoked shall close and remain closed until a new license is issued.

(7) The director may terminate proceedings undertaken pursuant to this section at any time if the reasons for such proceedings no longer exist. A license which has been suspended may be reinstated, a person with a revoked license may be issued a new license, or a licensee may no longer be subject to an order of probation if the director determines the conditions which prompted the suspension, revocation, or probation no longer exist.

(8) Proceedings undertaken pursuant to this section shall not preclude the department from seeking other civil or criminal actions.

Source: Laws 2000, LB 825, § 7; Laws 2007, LB12, § 6.
Effective date September 1, 2007.

54-632 Notice or order; service requirements; hearing; appeal. (1) Any notice or order provided for in the Commercial Dog and Cat Operator Inspection Act shall be properly served when it is personally served on the licensee or on the person authorized by the licensee to receive notices and orders of the department or when it is sent by certified or registered mail, return receipt requested, to the last-known address of the licensee or the person authorized by the licensee to receive such notices and orders. A copy of the notice and the order shall be filed in the records of the department.

(2) A notice to comply with the conditions set out in the order of the director provided in section 54-631 shall set forth the acts or omissions with which the licensee is charged.

(3) A notice of the licensee's right to a hearing provided for in sections 54-630 and 54-631 shall set forth the time and place of the hearing except as otherwise provided in section 54-631. A notice of the licensee's right to such hearing shall include notice that such right to a hearing may be waived pursuant to subsection (5) of this section. A notice of the licensee's right to a hearing shall include notice to the licensee that the license may be subject to sanctions as provided in section 54-631.

(4) The hearings provided for in the act shall be conducted by the director at the time and place he or she designates. The director shall make a final finding based on the complete hearing record and issue an order. If the director has suspended a license pursuant to subsection (4) of section 54-631, the director shall sustain, modify, or rescind the order after the hearing. All hearings shall be in accordance with the Administrative Procedure Act.

(5) A licensee waives the right to a hearing if such licensee does not attend the hearing at the time and place set forth in the notice described in subsection (3) of this section, without requesting the director at least two days before the designated time to change the time and place for the hearing, except that before an order of the director becomes final, the director may designate a different time and place for the hearing if the licensee shows the director that the licensee had a justifiable reason for not attending the hearing and not timely requesting a change of the time and place for such hearing. If the licensee waives the right to a hearing, the director shall make a final finding based upon the available information and issue an order. If the director has suspended a license pursuant to subsection (4) of section 54-631, the director may sustain, modify, or rescind the order after the hearing.

(6) Any person aggrieved by the finding of the director has ten days after the entry of the director's order to request a new hearing if such person can show that a mistake of fact has been made which affected the director's determination. Any order of the director becomes final upon the expiration of ten days after its entry if no request for a new hearing is made.

Source: Laws 2000, LB 825, § 8; Laws 2007, LB12, § 7.
Effective date September 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

54-633 Enforcement powers; administrative fine. (1) In order to ensure compliance with the Commercial Dog and Cat Operator Inspection Act, the department may apply for a restraining order, temporary or permanent injunction, or mandatory injunction against any person violating or threatening to violate the act, the rules and regulations, or any order of the director issued pursuant thereto. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

The county attorney of the county in which such violations are occurring or about to occur shall, when notified of such violation or threatened violation, cause appropriate proceedings under this section to be instituted and pursued without delay.

(2) If alleged violations of the Commercial Dog and Cat Operator Inspection Act, the rules and regulations, or an order of the director or an offense against animals observed by an inspector in the course of performing an inspection under the act poses a significant threat to the health or safety of the dogs or cats harbored or owned by an applicant or licensee, the department may direct an inspector to impound the dogs or cats pursuant to sections 28-1011 and 28-1012 or may request any other law enforcement officer as defined in section 28-1008 to impound the dogs or cats pursuant to sections 28-1011 and 28-1012. The department shall cooperate and coordinate with law enforcement agencies, political subdivisions, animal shelters, humane societies, and other appropriate entities, public or private, to provide for the care, shelter, and disposition of animals impounded by the department pursuant to this section.

(3) The department may impose an administrative fine of not more than five thousand dollars for any violation of the act or the rules and regulations adopted and promulgated under the act. Each violation of the act or such rules and regulations shall constitute a separate offense for purposes of this subsection.

Source: Laws 2000, LB 825, § 9; Laws 2006, LB 856, § 15; Laws 2007, LB12, § 8.
Effective date September 1, 2007.

54-643 Administrative fines; disposition; lien; collection. (1) All money collected by the department pursuant to section 54-633 shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(2) Any administrative fine levied pursuant to section 54-633 which remains unpaid for more than sixty days shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property.

Source: Laws 2007, LB12, § 9.
Effective date September 1, 2007.

ARTICLE 7

PROTECTION OF HEALTH

(a) GENERAL POWERS AND DUTIES OF DEPARTMENT OF AGRICULTURE

Section.

54-703. Prevention of diseases; enforcement of sections; inspections; rules and regulations.

(b) BOVINE TUBERCULOSIS ACT

54-706. Repealed. Laws 2007, LB 110, § 20.

54-706.01. Act, how cited.

54-706.02. Purpose of act.

54-706.03. Definitions.

54-706.04. Federal regulations adopted; inconsistency; how treated; filing required.

54-706.05. Act; administration and enforcement; department; powers and duties; prohibited acts; penalty.

54-706.06. Animal exhibiting signs of bovine tuberculosis; report required; submit animal for testing.

54-706.07. Department; rules and regulations; tests; reports.

54-706.08. Quarantine; epidemiologic investigation; prohibited acts; penalty.

54-706.09. Cleaning and disinfection of affected premises.

54-706.10. Examination and testing of affected herd; prohibited acts; penalty.

54-706.11. Department; assessment and collection of payments for services.

54-706.12. Bovine Tuberculosis Cash Fund; created; use; investment.

54-706.13. Implementation of act; funding; limitations on payments.

54-706.14. Tuberculin; injection or application; limitations.

54-706.15. Department; enforcement powers; Attorney General or county attorney; powers and duties.

54-706.16. Violations; department powers; hearing; order or other action; appeal.

54-706.17. Violations of act; penalty.

54-707. Repealed. Laws 2007, LB 110, § 20.

54-708. Repealed. Laws 2007, LB 110, § 20.

54-709. Repealed. Laws 2007, LB 110, § 20.

54-710. Repealed. Laws 2007, LB 110, § 20.

54-711. Repealed. Laws 2007, LB 110, § 20.

54-712. Repealed. Laws 2007, LB 110, § 20.

54-713. Repealed. Laws 2007, LB 110, § 20.

54-714. Repealed. Laws 2007, LB 110, § 20.

54-715. Repealed. Laws 2007, LB 110, § 20.

54-716. Repealed. Laws 2007, LB 110, § 20.

54-717. Repealed. Laws 2007, LB 110, § 20.

54-718. Repealed. Laws 2007, LB 110, § 20.

54-719. Repealed. Laws 2007, LB 110, § 20.

- 54-720. Repealed. Laws 2007, LB 110, § 20.
 54-721. Repealed. Laws 2007, LB 110, § 20.
 54-722. Repealed. Laws 2007, LB 110, § 20.

(d) GENERAL PROVISIONS

- 54-744.01. Dead animals; carcasses; disposal facilities; registration; when.
 54-747. Diseased animals; order for destruction; notice; protest; examination.

(a) GENERAL POWERS AND DUTIES OF DEPARTMENT OF AGRICULTURE

54-703 Prevention of diseases; enforcement of sections; inspections; rules and regulations. (1) The Department of Agriculture and all inspectors and persons appointed and authorized to assist in the work of the department shall enforce sections 54-701 to 54-753.05, 54-797 to 54-7,103, and 54-7,105 to 54-7,108 as designated.

(2) The department and any officer, agent, employee, or appointee of the department shall have the right to enter upon the premises of any person who has, or is suspected of having, any animal thereon, including any premises where the carcass or carcasses of dead livestock may be found or where a facility for the disposal or storage of dead livestock is located, for the purpose of making any and all inspections, examinations, tests, and treatments of such animal, to inspect livestock carcass disposal practices, and to declare, carry out, and enforce any and all quarantines.

(3) The department, in consultation with the Department of Environmental Quality and the Department of Health and Human Services, may adopt and promulgate rules and regulations reflecting best management practices for the burial of carcasses of dead livestock.

(4) The Department of Agriculture shall further adopt and promulgate such rules and regulations as are necessary to promptly and efficiently enforce and effectuate the general purpose and provisions of such sections.

Source: Laws 1927, c. 12, art. I, § 3, p. 81; C.S.1929, § 54-903; R.S.1943, § 54-703; Laws 1993, LB 267, § 4; Laws 2001, LB 438, § 4; Laws 2006, LB 856, § 18; Laws 2007, LB296, § 224.
 Operative date July 1, 2007.

(b) BOVINE TUBERCULOSIS ACT

54-706 Repealed. Laws 2007, LB 110, § 20.

54-706.01 Act, how cited. Sections 54-706.01 to 54-706.17 and the provisions of the Code of Federal Regulations and Bovine Tuberculosis Eradication Uniform Methods and Rules adopted by reference in section 54-706.04 shall be known and may be cited as the Bovine Tuberculosis Act.

Source: Laws 2007, LB110, § 1.
 Effective date February 15, 2007.

54-706.02 Purpose of act. The purpose of the Bovine Tuberculosis Act is to maintain Nebraska's status as a tuberculosis accredited free state through the use of monitoring and surveillance to maintain tuberculosis-free conditions within the state.

Source: Laws 2007, LB110, § 2.
Effective date February 15, 2007.

54-706.03 Definitions. For purposes of the Bovine Tuberculosis Act, the definitions found in the federal regulations and rules adopted by reference in section 54-706.04 shall be used and:

(1) Accredited veterinarian means a veterinarian approved by the Administrator of APHIS to perform functions required by cooperative state-federal animal disease control and eradication programs;

(2) Animal means all vertebrate members of the animal kingdom except humans or wild animals at large;

(3) APHIS means the Animal and Plant Health Inspection Service of the United States Department of Agriculture;

(4) Bovine means cattle and bison;

(5) Department means the Department of Agriculture or its authorized designee;

(6) Designated accredited veterinarian means an accredited veterinarian trained and approved to conduct specific bovine tuberculosis tests such as the bovine interferon gamma assay, other bovine tuberculosis program activities, or both; and

(7) State Veterinarian means the veterinarian in charge of the Bureau of Animal Industry within the department or his or her designee, subordinate to the Director of Agriculture.

Source: Laws 2007, LB110, § 3.
Effective date February 15, 2007.

54-706.04 Federal regulations adopted; inconsistency; how treated; filing required. (1) The Legislature hereby adopts by reference 9 C.F.R. part 77, except requirements relating to captive cervids, and the Bovine Tuberculosis Eradication Uniform Methods and Rules published by APHIS in effect on February 15, 2007, as part of the Bovine Tuberculosis Act. If there is an inconsistency between such federal regulations and the Bovine Tuberculosis Act or between such Uniform Methods and Rules and the Bovine Tuberculosis Act, the requirements of the Bovine Tuberculosis Act shall control. If there is an inconsistency between such federal regulations and the Uniform Methods and Rules, the requirements of the federal regulations shall control, except in the definition of livestock where the definition in the Uniform Methods and Rules shall control.

(2) Certified copies of the portion of the federal regulations and the rules adopted by reference pursuant to this section shall be filed in the offices of the Secretary of State, Clerk of the Legislature, and department.

Source: Laws 2007, LB110, § 4.
Effective date February 15, 2007.

54-706.05 Act; administration and enforcement; department; powers and duties; prohibited acts; penalty. (1) The Bovine Tuberculosis Act shall be administered and enforced by the Bureau of Animal Industry of the department.

(2) In administering the act, the department may cooperate and contract with persons or appropriate local, state, or national organizations, public or private, for the performance of activities required or authorized pursuant to the act. The department may also cooperate with the APHIS in (a) the control and eradication of bovine tuberculosis in this state and (b) recommending where and how any available federal funds and state personnel and materials are allocated for the purpose of bovine tuberculosis control and eradication.

(3) In administering the act, the department shall have access to all livestock dealer and livestock auction market records to facilitate the traceback of affected, exposed, suspect, or reactor animals to the herd of origin or other point of original infection. Such records shall be maintained for a minimum of five years and shall be made available to the State Veterinarian upon request during normal business hours.

(4) For purposes of making inspections, conducting tests, or both, agents and employees of the department shall have access to any premises where animals may be located. Any person who interferes or obstructs any agent or employee of the department in such work or attempts to obstruct or prevent by force the carrying on of such inspection, testing, or both is guilty of a Class II misdemeanor.

Source: Laws 2007, LB110, § 5.
Effective date February 15, 2007.

54-706.06 Animal exhibiting signs of bovine tuberculosis; report required; submit animal for testing. Any person who discovers, suspects, or has reason to believe that any animal belonging to him, her, or another person or which he or she has in his or her possession or custody is exhibiting signs consistent with bovine tuberculosis shall immediately report such fact, belief, or suspicion to the State Veterinarian.

An owner or custodian of an animal exhibiting signs consistent with bovine tuberculosis shall submit such designated animal to be tested when ordered to do so by the State Veterinarian.

Source: Laws 2007, LB110, § 6.
Effective date February 15, 2007.

54-706.07 Department; rules and regulations; tests; reports. (1) The department by rule and regulation may prescribe the manner, method, and system of testing livestock or any other animal suspected of being affected with or exposed to *M. bovis* under a cooperative program.

(2) The department may also adopt and promulgate any other rules and regulations necessary to carry out the Bovine Tuberculosis Act.

(3) Accredited veterinarians are authorized to apply only the caudal fold tuberculin test. Tuberculin tests shall be conducted by a veterinarian employed by the department or APHIS

or by a designated accredited veterinarian. All tests are official tests and shall be reported to the State Veterinarian on an official bovine tuberculosis test chart. Such report shall include the official identification, age, sex, and breed of each animal and a record of all responses and test interpretations.

Source: Laws 2007, LB110, § 7.
Effective date February 15, 2007.

54-706.08 Quarantine; epidemiologic investigation; prohibited acts; penalty. (1)

The State Veterinarian may immediately quarantine any animal and the premises on which such animal is located if bovine tuberculosis is suspected or has been diagnosed in an animal on such premises.

(2) Disclosure of bovine tuberculosis in any animal shall be followed by an epidemiologic investigation in accordance with the Bovine Tuberculosis Act.

(3) No person shall prevent the testing of or remove any animal which has been placed in quarantine pursuant to this section from the place of quarantine until such quarantine is released by the State Veterinarian, except authorized movement for slaughter or other movement as authorized by the State Veterinarian. Any person who violates this subsection is guilty of a Class II misdemeanor. Each animal moved, purchased, sold, traded, bartered, granted, loaned, or otherwise transferred in violation of this subsection is a separate violation.

Source: Laws 2007, LB110, § 8.
Effective date February 15, 2007.

54-706.09 Cleaning and disinfection of affected premises. (1) All premises that are

determined by the State Veterinarian to constitute a health hazard to animals because of bovine tuberculosis shall be properly cleaned and disinfected in accordance with the Bovine Tuberculosis Act.

(2) The State Veterinarian may require and supervise the prescribed cleaning and disinfection of affected premises.

Source: Laws 2007, LB110, § 9.
Effective date February 15, 2007.

54-706.10 Examination and testing of affected herd; prohibited acts; penalty. The

owner or custodian of an affected herd shall assemble and submit such herd for bovine tuberculosis examination and testing and shall provide reasonable assistance in confining the animals and providing facilities for proper administration of the testing. Any person who interferes or obstructs anyone in such work or attempts to obstruct or prevent by force the carrying on of such examination and testing is guilty of a Class II misdemeanor.

Source: Laws 2007, LB110, § 10.
Effective date February 15, 2007.

54-706.11 Department; assessment and collection of payments for services. The department may assess and collect payment for services provided and expenses incurred pursuant to its responsibilities under the Bovine Tuberculosis Act and the rules and regulations adopted and promulgated pursuant thereto. All payments assessed and collected pursuant to this section shall be remitted to the State Treasurer for credit to the Bovine Tuberculosis Cash Fund.

Source: Laws 2007, LB110, § 11.
Effective date February 15, 2007.

54-706.12 Bovine Tuberculosis Cash Fund; created; use; investment. The Bovine Tuberculosis Cash Fund is created. The fund shall consist of money appropriated by the Legislature and gifts, grants, costs, or charges from any source, including federal, state, public, and private sources. The fund shall be used to carry out the Bovine Tuberculosis Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2007, LB110, § 12.
Effective date February 15, 2007.

Cross Reference

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

54-706.13 Implementation of act; funding; limitations on payments. (1) The department may provide state funds to or on behalf of herd owners for certain activities or any portion thereof in connection with the implementation of the Bovine Tuberculosis Act if funds for any activities or any portion have been appropriated. The department may develop statewide priorities for the expenditure of state funds available for bovine tuberculosis control and eradication program activities.

(2) Part of such state funds may be used by the department to pay a portion of the cost of testing done by or for accredited veterinarians if such work is approved by the department.

(3) In administering the act and program activities pursuant to the act, the department shall not pay for (a) testing done for change of ownership at private treaty or at concentration points, (b) costs of gathering, confining, and restraining animals subjected to testing or costs of providing necessary facilities and assistance, (c) costs of testing to qualify or maintain herd accreditation, or (d) indemnity for any animal destroyed as a result of being affected with bovine tuberculosis.

(4) The department is not liable for actual or incidental costs incurred by any person due to departmental actions in enforcing the Bovine Tuberculosis Act.

Source: Laws 2007, LB110, § 13.
Effective date February 15, 2007.

54-706.14 Tuberculin; injection or application; limitations. (1) No person other than an accredited veterinarian shall inject or apply tuberculin into or on any animal.

(2) No person, including a veterinarian, shall inject or apply tuberculin into or on any animal for the purpose of plugging, for the purpose of fraudulently concealing the presence of bovine tuberculosis in such animal, or for the purpose of preventing future reactions to tuberculin.

Source: Laws 2007, LB110, § 14.
Effective date February 15, 2007.

54-706.15 Department; enforcement powers; Attorney General or county attorney; powers and duties. (1) In order to insure compliance with the Bovine Tuberculosis Act, the department may apply for a temporary restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or the rules and regulations adopted and promulgated under the act. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(2) It shall be the duty of the Attorney General or the county attorney of the county in which violations of the act are occurring or are about to occur, when notified of such violations or threatened violations by the department, to cause appropriate proceedings under subsection (1) of this section to be instituted and pursued in the district court without delay. It shall also be the duty of the Attorney General or county attorney of the county in which violation of the act occurred to prosecute violations without delay.

(3) This section does not require the department to report all acts for prosecution if in the opinion of the Director of Agriculture the public interest will best be served through other administrative, criminal, or civil actions.

Source: Laws 2007, LB110, § 15.
Effective date February 15, 2007.

54-706.16 Violations; department powers; hearing; order or other action; appeal. (1) Whenever the Director of Agriculture or the State Veterinarian has reason to believe that any person has violated any of the provisions of the Bovine Tuberculosis Act or any rules or regulations adopted and promulgated under the act, an order may be entered requiring such person to appear before the director and show cause why an order should not be entered requiring such person to cease and desist from the violations charged. Such order shall set forth the alleged violations, fix the time and place of the hearing, and provide for notice thereof which shall be given not less than twenty days before the date of such hearing. After a hearing, or if the person charged with such violation fails to appear at the time of such hearing, if the director finds such person to be in violation, the director shall enter an order requiring such person to cease and desist from the specific acts, practices, or omissions.

(2) Any person aggrieved by any order entered by the director or other action of the director under the Bovine Tuberculosis Act may appeal the order or action, and the appeal shall be in accordance with the Administrative Procedure Act.

(3) This section does not prevent the department from first pursuing any other administrative, civil, or criminal actions provided in the Bovine Tuberculosis Act when there is a violation of the act or rules and regulations adopted and promulgated under the act.

Source: Laws 2007, LB110, § 16.
Effective date February 15, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

54-706.17 Violations of act; penalty. Any person violating the Bovine Tuberculosis Act or any rule or regulation adopted and promulgated under the act for which no penalty is otherwise provided is guilty of a Class II misdemeanor.

Source: Laws 2007, LB110, § 17.
Effective date February 15, 2007.

54-707 Repealed. Laws 2007, LB 110, § 20.

54-708 Repealed. Laws 2007, LB 110, § 20.

54-709 Repealed. Laws 2007, LB 110, § 20.

54-710 Repealed. Laws 2007, LB 110, § 20.

54-711 Repealed. Laws 2007, LB 110, § 20.

54-712 Repealed. Laws 2007, LB 110, § 20.

54-713 Repealed. Laws 2007, LB 110, § 20.

54-714 Repealed. Laws 2007, LB 110, § 20.

54-715 Repealed. Laws 2007, LB 110, § 20.

54-716 Repealed. Laws 2007, LB 110, § 20.

54-717 Repealed. Laws 2007, LB 110, § 20.

54-718 Repealed. Laws 2007, LB 110, § 20.

54-719 Repealed. Laws 2007, LB 110, § 20.

54-720 Repealed. Laws 2007, LB 110, § 20.

54-721 Repealed. Laws 2007, LB 110, § 20.

54-722 Repealed. Laws 2007, LB 110, § 20.

(d) GENERAL PROVISIONS

54-744.01 Dead animals; carcasses; disposal facilities; registration; when. (1) Livestock carcasses may be disposed of in a research or demonstration facility for innovative livestock disposal methods registered with the Department of Agriculture, except that a research or demonstration facility of liquefaction shall not be registered under this section and liquefaction shall not be permitted as a method of livestock disposal. The registration of a facility under this section shall contain a description of the facility, the location and proposed duration of the research or demonstration, and a description of the method of disposal to be utilized. The department may register up to five such research or demonstration facilities conducted in conjunction with private livestock operations which meet all of the following conditions:

(a) The project is designed and conducted by one or more research faculty of the University of Nebraska;

(b) The project does not duplicate other research or demonstration projects;

(c) The project sponsors submit annual reports on the project and a final report at the conclusion of the project;

(d) The project employs adequate safeguards against disease transmission or environmental contamination; and

(e) The project meets any other conditions deemed prudent by the director.

(2) It is the intent of the Legislature that the department register at least one research or demonstration facility for innovative livestock disposal methods which shall be located upon the premises of an animal feeding operation as defined in section 54-2417. Before registering such facility, the department shall first consult with the Department of Environmental Quality and the Department of Health and Human Services. The Department of Agriculture may revoke the registration of the facility at any time if the director has reason to believe that the facility no longer meets the conditions for registration.

(3) Only the carcasses of livestock that have died upon the animal feeding operation premises where a research or demonstration facility for innovative livestock disposal methods is located may be disposed of at such facility. Carcasses from other locations shall not be transported to such facility for disposal.

(4) A facility registered under this section is exempt from the requirements for disposal of solid waste under the Integrated Solid Waste Management Act.

Source: Laws 2001, LB 438, § 20; Laws 2004, LB 916, § 4; Laws 2007, LB296, § 225.
Operative date July 1, 2007.

Cross Reference

Integrated Solid Waste Management Act, see section 13-2001.

54-747 Diseased animals; order for destruction; notice; protest; examination. Whenever any animal has been adjudged to be affected with any infectious, contagious, or otherwise transmissible disease, other than a disease for which specific legislation exists, and has been ordered killed, the owner or custodian thereof shall be notified of such finding and order. Within forty-eight hours thereafter, such owner or custodian may file a protest with the Department of Agriculture stating under oath that to the best of his or her knowledge and belief such animal is free from such infectious, contagious, or otherwise transmissible disease. Thereupon, an examination of the animal involved shall be made by three veterinarians, graduates of a college of veterinary medicine which has been approved by the Department of Health and Human Services as a preliminary qualification for admission to practice veterinary medicine in the state. One of such veterinarians shall be appointed by the department, one by the person making such protest, and the two thus appointed shall choose the third. In case all three veterinarians or any two of them find such animal to be free from such infectious, contagious, or otherwise transmissible disease, the expense of such examination shall be paid by the state. In case the three veterinarians or any two of them find such animal to be affected with such infectious, contagious, or otherwise transmissible disease, the expense of the examination shall be paid by the person making the protest. The department and the person making such protest shall be bound by the result of such examination.

Source: Laws 1927, c. 12, art. VIII, § 6, p. 93; C.S.1929, § 54-943; R.S.1943, § 54-747; Laws 1969, c. 451, § 2, p. 1537; Laws 1993, LB 267, § 12; Laws 1996, LB 1044, § 279; Laws 2007, LB296, § 226. Operative date July 1, 2007.

ARTICLE 24

LIVESTOCK WASTE MANAGEMENT ACT

Section.

54-2423. Animal feeding operation; request inspection; when; fees; department; duties.

54-2429. National Pollutant Discharge Elimination System permit; construction and operating permit; application; approval from Department of Natural Resources; Department of Environmental Quality; powers; applicability of Engineers and Architects Regulation Act.

54-2423 Animal feeding operation; request inspection; when; fees; department; duties. (1) If any person owning or operating an animal feeding operation (a) does not hold a National Pollutant Discharge Elimination System permit, an operating permit, or a construction and operating permit or have construction approval, (b) has not been notified by the department that no National Pollutant Discharge Elimination System permit or construction and operating permit is required, or (c) is not exempt under section 54-2422, such person shall, on forms prescribed by the department, request the department to inspect such person's animal feeding operation to determine if a livestock waste control facility is required. If an inspection is requested prior to January 1, 1999, an inspection fee for such inspection shall not be assessed. For inspections requested on or after July 16, 2004, there shall be an

inspection fee established by the council with a minimum fee of one hundred dollars and a maximum fee of five hundred dollars. Such fee may be set according to animal capacity.

(2) The department shall, in conjunction with natural resources districts and the Cooperative Extension Service of the University of Nebraska, publicize information to make owners and operators of affected animal feeding operations aware of the need to request an inspection.

(3) Any person required to request an inspection under this section who operates an animal feeding operation after January 1, 2000, without first submitting the request for inspection required under this section shall be assessed, except for good cause shown, a late fee of not less than fifty dollars nor more than five hundred dollars for each offense. Each month a violation continues shall constitute a separate offense. Exceptions to this provision are:

(a) An animal feeding operation exempted by the department from National Pollutant Discharge Elimination System permit requirements prior to July 16, 2004; or

(b) A livestock operation that became an animal feeding operation by enactment of the Livestock Waste Management Act as such act existed on July 16, 2004, but was not required to request an inspection prior to that date.

(4) A person meeting the provisions of subdivision (3)(b) of this section shall request an inspection prior to January 1, 2009, and pay fees required pursuant to subsection (1) of this section.

(5) Any person required to request an inspection under subsection (4) of this section who operates an animal feeding operation after December 31, 2008, shall be assessed, except for good cause shown, a late fee of not less than fifty dollars nor more than five hundred dollars for each offense. Each month a violation continues shall constitute a separate offense.

Source: Laws 1998, LB 1209, § 6; Laws 1999, LB 870, § 8; R.S.Supp.,2002, § 54-2406; Laws 2004, LB 916, § 12; Laws 2006, LB 975, § 6; Laws 2007, LB677, § 1.
Effective date April 12, 2007.

Cross Reference

Environmental Protection Act, see section 81-1532.

54-2429 National Pollutant Discharge Elimination System permit; construction and operating permit; application; approval from Department of Natural Resources; Department of Environmental Quality; powers; applicability of Engineers and Architects Regulation Act. (1) An applicant for a National Pollutant Discharge Elimination System permit or a construction and operating permit under the Environmental Protection Act or the Livestock Waste Management Act shall, before issuance by the Department of Environmental Quality, obtain any necessary approvals from the Department of Natural Resources under the Safety of Dams and Reservoirs Act and certify such approvals to the Department of Environmental Quality. The Department of Environmental Quality, with the concurrence of the Department of Natural Resources, may require the applicant to obtain approval from the Department of Natural Resources for any dam, holding pond, or lagoon structure which would not otherwise require approval under the Safety of Dams and Reservoirs Act but which in the event of a failure could result in a significant discharge

into waters of the state and have a significant impact on the environment. The Department of Environmental Quality may provide for the payment of such costs of the Department of Natural Resources with revenue generated under section 54-2428.

(2) An applicant required to obtain a National Pollutant Discharge Elimination System permit is subject to the requirements of the Engineers and Architects Regulation Act.

(3) An applicant who has a large concentrated animal feeding operation, as defined in 40 C.F.R. 122 and 123, as such regulations existed on January 1, 2004, and who is required to obtain a construction and operating permit is subject to the requirements of the Engineers and Architects Regulation Act.

(4) An applicant who has a small or medium animal feeding operation, as defined in 40 C.F.R. 122 and 123, as such regulations existed on January 1, 2004, and who is required to obtain a construction and operating permit, but not required to obtain a National Pollutant Discharge Elimination System permit, is exempt from the Engineers and Architects Regulation Act.

(5) The department may require an engineering evaluation or assessment performed by a licensed professional engineer for a livestock waste control facility if after an inspection: (a) The department determines that the facility has (i) visible signs of structural breakage below the permanent pool, (ii) signs of discharge or proven discharge due to structural weakness, (iii) improper maintenance, or (iv) inadequate capacity; or (b) the department has reason to believe that an animal feeding operation with a livestock waste control facility has violated or threatens to violate the Environmental Protection Act, the Livestock Waste Management Act, or any rules or regulations adopted and promulgated under such acts. Animal feeding operations not required to have a permit under the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated pursuant to such acts are exempt from the Engineers and Architects Regulation Act.

Source: Laws 1998, LB 1209, § 12; Laws 1999, LB 870, § 13; Laws 2000, LB 900, § 243; Laws 2003, LB 619, § 16; R.S.Supp.,2003, § 54-2412; Laws 2004, LB 916, § 18; Laws 2005, LB 335, § 80; Laws 2006, LB 975, § 11; Laws 2007, LB313, § 1.
Effective date September 1, 2007.

Cross Reference

Engineers and Architects Regulation Act, see section 81-3401.

Environmental Protection Act, see section 81-1532.

Safety of Dams and Reservoirs Act, see section 46-1601.

CHAPTER 55

MILITIA

Article.

1. Military Code. 55-131.
5. Family Military Leave Act. 55-501 to 55-507.

ARTICLE 1

MILITARY CODE

Section.

55-131. Adjutant General; property; receipt as trustee; control; disposition; Military Department Cash Fund; created; investment.

55-131 Adjutant General; property; receipt as trustee; control; disposition; Military Department Cash Fund; created; investment. The Military Department Cash Fund is created. The fund shall be administered by the Adjutant General. The fund shall consist of all nonfederal revenue received by the National Guard pursuant to this section. The Adjutant General is hereby authorized to accept by devise, gift, or otherwise and hold, as trustee, for the benefit and use of the National Guard or any part thereof any property, real or personal; to invest and reinvest the property; to collect, receive, and recover the rents, incomes, and issues from the property; and to expend them as provided by the terms of the devise or gift, or if not so provided, to expend them for the benefit and use of the National Guard as he or she in his or her discretion shall determine, subject to the approval of the Governor. Except as otherwise provided by law, all other money received by the National Guard and derived from any other source shall be remitted to the State Treasurer for credit to the Military Department Cash Fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1929, c. 189, § 20, p. 662; C.S.1929, § 55-126; R.S.1943, § 55-150; Laws 1965, c. 342, § 1, p. 973; R.R.S.1943, § 55-150; Laws 1969, c. 459, § 29, p. 1591; Laws 1969, c. 584, § 55, p. 2379; Laws 1995, LB 7, § 61; Laws 2006, LB 787, § 9; Laws 2007, LB322, § 9.
Operative date July 1, 2007.

Cross Reference

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 5

FAMILY MILITARY LEAVE ACT

Section.

- 55-501. Act, how cited.
55-502. Terms, defined.

- 55-503. Family military leave authorized; conditions.
 55-504. Employee exercising right to family military leave; rights; continuation of benefits.
 55-505. Loss of certain employee benefits prohibited; act; how construed.
 55-506. Employer; actions prohibited.
 55-507. Civil action authorized; remedies authorized.

55-501 Act, how cited. Sections 55-501 to 55-507 shall be known and may be cited as the Family Military Leave Act.

Source: Laws 2007, LB497, § 1.
 Effective date April 5, 2007.

55-502 Terms, defined. For purposes of the Family Military Leave Act:

(1) Employee means any person who may be permitted, required, or directed by an employer in consideration of direct or indirect gain or profit to engage in any employment. Employee does include an independent contractor. Employee includes an employee of a covered employer who has been employed by the same employer for at least twelve months and has been employed for at least one thousand two hundred fifty hours of service during the twelve-month period immediately preceding the commencement of the leave;

(2) Employee benefits means all benefits, other than salary and wages, provided or made available to employees by an employer and includes group life insurance, health insurance, disability insurance, and pensions, regardless of whether benefits are provided by a policy or practice of an employer;

(3) Employer means (a) any individual, legal representative, partnership, limited liability company, corporation, association, business trust, or other business entity and (b) the State of Nebraska and political subdivisions; and

(4) Family military leave means leave requested by an employee who is the spouse or parent of a person called to military service lasting one hundred seventy-nine days or longer with the state or United States pursuant to the orders of the Governor or the President of the United States.

Source: Laws 2007, LB497, § 2.
 Effective date April 5, 2007.

55-503 Family military leave authorized; conditions. (1) Any employer that employs between fifteen and fifty employees shall provide up to fifteen days of unpaid family military leave to an employee during the time federal or state deployment orders are in effect, subject to the conditions set forth in this section.

(2) An employer that employs more than fifty employees shall provide up to thirty days of unpaid family military leave to an employee during the time federal or state deployment orders are in effect, subject to the conditions set forth in this section.

(3) The employee shall give at least fourteen days' notice of the intended date upon which the family military leave will commence if leave will consist of five or more consecutive work

days. Where able, the employee shall consult with the employer to schedule the leave so as to not unduly disrupt the operations of the employer. Employees taking family military leave for less than five consecutive days shall give the employer advanced notice as is practicable. The employer may require certification from the proper military authority to verify the employee's eligibility for the family military leave requested.

Source: Laws 2007, LB497, § 3.
Effective date April 5, 2007.

55-504 Employee exercising right to family military leave; rights; continuation of benefits. (1) Any employee who exercises the right to family military leave under the Family Military Leave Act, upon expiration of the leave, shall be entitled to be restored by the employer to the position held by the employee when the leave commenced or to a position with equivalent seniority status, employee benefits, pay, and other terms and conditions of employment. This section does not apply if the employer proves that the employee was not restored because of conditions unrelated to the employee's exercise of rights under the act.

(2) During any family military leave taken under the act, the employer shall make it possible for employees to continue their benefits at the employee's expense. The employer and employee may negotiate for the employer to maintain benefits at the employer's expense for the duration of the leave.

Source: Laws 2007, LB497, § 4.
Effective date April 5, 2007.

55-505 Loss of certain employee benefits prohibited; act; how construed. (1) Taking family military leave under the Family Military Leave Act shall not result in the loss of any employee benefit accrued before the date on which the leave commenced.

(2) Nothing in the act shall be construed to affect an employer's obligation to comply with any collective-bargaining agreement or employee benefit plan that provides greater leave rights to employees than the rights provided under the act.

(3) The family military leave rights provided under the act shall not be diminished by any collective-bargaining agreement or employee benefit plan.

(4) Nothing in the act shall be construed to affect or diminish the contract rights or seniority status of any other employee of any employer covered under the act.

Source: Laws 2007, LB497, § 5.
Effective date April 5, 2007.

55-506 Employer; actions prohibited. (1) An employer shall not interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided under the Family Military Leave Act.

(2) An employer shall not discharge, fine, suspend, expel, discipline, or in any other manner discriminate against any employee who exercises any right provided under the act.

(3) An employer shall not discharge, fine, suspend, expel, discipline, or in any other manner discriminate against any employee for opposing any practice made unlawful by the act.

Source: Laws 2007, LB497, § 6.
Effective date April 5, 2007.

55-507 Civil action authorized; remedies authorized. A civil action may be brought in the district court having jurisdiction by an employee to enforce the Family Military Leave Act. The district court may enjoin any act or practice that violates or may violate the Family Military Leave Act and may order any other equitable relief that is necessary and appropriate to redress the violation or to enforce the act.

Source: Laws 2007, LB497, § 7.
Effective date April 5, 2007.

CHAPTER 57

MINERALS, OIL, AND GAS

Article.

2. Oil, Gas, and Mineral Interests. 57-239.
5. Liquefied Petroleum Gas. 57-517.

ARTICLE 2

OIL, GAS, AND MINERAL INTERESTS

Section.

57-239. Tax Commissioner; rules and regulations; prescribe forms.

57-239 Tax Commissioner; rules and regulations; prescribe forms. The Tax Commissioner shall adopt and promulgate rules and regulations necessary for the implementation of sections 57-235 to 57-239. The Tax Commissioner shall also prescribe necessary forms for the implementation of sections 57-235 to 57-239.

Source: Laws 1981, LB 59, § 5; Laws 2000, LB 968, § 19; Laws 2007, LB334, § 8.
Operative date July 1, 2007.

ARTICLE 5

LIQUEFIED PETROLEUM GAS

Section.

57-517. Liquefied petroleum gas vapor service system; container warning label; affixed by provider; limitation on liability.

57-517 Liquefied petroleum gas vapor service system; container warning label; affixed by provider; limitation on liability. (1) The Legislature finds it is necessary that a leak check be performed following an interruption of service of a liquefied petroleum gas vapor service system to ensure safe and proper operation. Further, the Legislature finds that a leak check must be performed by a qualified service technician.

(2) It is the intent of the Legislature to create a mechanism that will educate users of liquefied petroleum gas of the requirements for a leak check when an interruption of service occurs.

(3) For purposes of this section:

(a) Interruption of service means the gas supply to a liquefied petroleum gas vapor service system is turned off;

(b) Leak check means an operation performed on a complete liquefied petroleum gas piping system and the connection equipment to verify that the liquefied petroleum gas vapor service system does not leak;

(c) Liquefied petroleum gas provider means any person or entity engaged in the business of supplying, handling, transporting, or selling at retail liquefied petroleum gas in this state; and

(d) Liquefied petroleum gas vapor service system means an installation with a maximum operating pressure of one hundred twenty-five pounds per square inch or less and includes, but is not limited to, the container assembly, pressure regulator or regulators, piping system, gas utilization equipment and components thereof, and venting system in residential, commercial, or institutional installations. Liquefied petroleum gas vapor service system does not include:

(i) Portable liquefied petroleum gas appliances and equipment of all types that are not connected to a fixed-fuel piping system;

(ii) Farm appliances and equipment in liquid service, including, but not limited to, brooders, dehydrators, dryers, and irrigation equipment;

(iii) Liquefied petroleum gas equipment for vaporization, gas mixing, and gas manufacturing;

(iv) Liquefied petroleum gas piping for buildings under construction or renovations that is not to become part of the permanent building piping system, such as temporary fixed piping for building heat; or

(v) Fuel gas system engines, including, but not limited to, tractors, mowers, trucks, and recreational vehicles.

(4) The liquefied petroleum gas provider shall affix a container warning label on each tank supplying liquefied petroleum gas to a liquefied petroleum gas vapor service system. The container warning label shall be affixed near the tank shutoff.

(5) The container warning label required by subsection (4) of this section shall include this warning:

WARNING: Do Not Open Container Shutoff Valve! If this valve is turned off for any reason, the National Fuel Gas Code (NFPA 54) requires a leak check of the system serviced by the container at the time the valve is turned back on. The leak check must be conducted by a qualified service technician. **Do Not Attempt To Open The Valve Yourself!** Failure to follow this warning may result in the ignition of leaking gas, causing serious and potentially fatal injury, fire, or explosion.

The container warning label shall include the statutory reference to this section.

(6) If the container warning label is affixed near the tank shutoff as required by subsection (4) of this section and the liquefied petroleum gas vapor service system is turned on prior to a leak check by a qualified service technician approved by the liquefied petroleum gas provider, the liquefied petroleum gas provider shall not be liable for any damage, injury, or death if the proximate cause of the damage, injury, or death was the negligence of a person or persons other than the liquefied petroleum gas provider.

Source: Laws 2007, LB274, § 1.
Operative date July 1, 2008.

CHAPTER 58

MONEY AND FINANCING

Article.

6. Nebraska Uniform Prudent Management of Institutional Funds Act. 58-601 to 58-619.

ARTICLE 6

NEBRASKA UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT

Section.

- 58-601. Repealed. Laws 2007, LB 136, § 11.
 58-602. Repealed. Laws 2007, LB 136, § 11.
 58-603. Repealed. Laws 2007, LB 136, § 11.
 58-604. Repealed. Laws 2007, LB 136, § 11.
 58-605. Repealed. Laws 2007, LB 136, § 11.
 58-606. Repealed. Laws 2007, LB 136, § 11.
 58-607. Repealed. Laws 2007, LB 136, § 11.
 58-608. Repealed. Laws 2007, LB 136, § 11.
 58-609. Repealed. Laws 2007, LB 136, § 11.
 58-610. Act, how cited.
 58-611. Definitions.
 58-612. Standard of conduct in managing and investing institutional fund.
 58-613. Appropriation for expenditure or accumulation of endowment fund; rules of construction.
 58-614. Delegation of management and investment functions.
 58-615. Release or modification of restrictions on management, investment, or purpose.
 58-616. Reviewing compliance.
 58-617. Application to existing institutional funds.
 58-618. Relation to Electronic Signatures in Global and National Commerce Act.
 58-619. Uniformity of application and construction.

58-601 Repealed. Laws 2007, LB 136, § 11.

58-602 Repealed. Laws 2007, LB 136, § 11.

58-603 Repealed. Laws 2007, LB 136, § 11.

58-604 Repealed. Laws 2007, LB 136, § 11.

58-605 Repealed. Laws 2007, LB 136, § 11.

58-606 Repealed. Laws 2007, LB 136, § 11.

58-607 Repealed. Laws 2007, LB 136, § 11.

58-608 Repealed. Laws 2007, LB 136, § 11.

58-609 Repealed. Laws 2007, LB 136, § 11.

58-610 Act, how cited. Sections 58-610 to 58-619 shall be known and be cited as the Nebraska Uniform Prudent Management of Institutional Funds Act.

Source: Laws 2007, LB136, § 1.
Effective date September 1, 2007.

58-611 Definitions. For purposes of the Nebraska Uniform Prudent Management of Institutional Funds Act:

(1) Charitable purpose means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.

(2) Endowment fund means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.

(3) Gift instrument means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

(4) Institution means:

(A) a person, other than an individual, organized and operated exclusively for charitable purposes;

(B) a government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; and

(C) a trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

(5) Institutional fund means a fund held by an institution exclusively for charitable purposes. The term does not include:

(A) program-related assets;

(B) a fund held for an institution by a trustee that is not an institution; or

(C) a fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

(6) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(7) Program-related asset means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

(8) Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Source: Laws 2007, LB136, § 2.
Effective date September 1, 2007.

58-612 Standard of conduct in managing and investing institutional fund. (a)

Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(b) In addition to complying with the duty of loyalty imposed by law other than the Nebraska Uniform Prudent Management of Institutional Funds Act, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In managing and investing an institutional fund, an institution:

(1) may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

(2) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool two or more institutional funds for purposes of management and investment.

(e) Except as otherwise provided by a gift instrument, the following rules apply:

(1) In managing and investing an institutional fund, the following factors, if relevant, must be considered:

(A) general economic conditions;

(B) the possible effect of inflation or deflation;

(C) the expected tax consequences, if any, of investment decisions or strategies;

(D) the role that each investment or course of action plays within the overall investment portfolio of the fund;

(E) the expected total return from income and the appreciation of investments;

(F) other resources of the institution;

(G) the needs of the institution and the fund to make distributions and to preserve capital; and

(H) an asset's special relationship or special value, if any, to the charitable purposes of the institution.

(2) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

(3) Except as otherwise provided by law other than the Nebraska Uniform Prudent Management of Institutional Funds Act, an institution may invest in any kind of property or type of investment consistent with this section.

(4) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

(5) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of the act.

(6) A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

Source: Laws 2007, LB136, § 3.
Effective date September 1, 2007.

58-613 Appropriation for expenditure or accumulation of endowment fund; rules of construction. (a) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

- (1) the duration and preservation of the endowment fund;
- (2) the purposes of the institution and the endowment fund;
- (3) general economic conditions;
- (4) the possible effect of inflation or deflation;
- (5) the expected total return from income and the appreciation of investments;
- (6) other resources of the institution; and
- (7) the investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section, a gift instrument must specifically state the limitation.

(c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only income, interest, dividends, or rents, issues, or profits, or to preserve the principal intact, or words of similar import:

- (1) create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and
- (2) do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section.

Source: Laws 2007, LB136, § 4.
Effective date September 1, 2007.

58-614 Delegation of management and investment functions. (a) Subject to any specific limitation set forth in a gift instrument or in law other than the Nebraska Uniform Prudent Management of Institutional Funds Act, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

(1) selecting an agent;
(2) establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and
(3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(c) An institution that complies with subsection (a) of this section is not liable for the decisions or actions of an agent to which the function was delegated.

(d) By accepting delegation of a management or investment function from an institution that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(e) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of this state other than the Nebraska Uniform Prudent Management of Institutional Funds Act.

Source: Laws 2007, LB136, § 5.
Effective date September 1, 2007.

58-615 Release or modification of restrictions on management, investment, or purpose. (a) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(b) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(c) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impractical, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard.

(d) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, sixty days after notification to the Attorney General, may release or modify the restriction, in whole or part, if:

- (1) the institutional fund subject to the restriction has a total value of less than twenty-five thousand dollars;
- (2) more than twenty years have elapsed since the fund was established; and
- (3) the institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

Source: Laws 2007, LB136, § 6.
Effective date September 1, 2007.

58-616 Reviewing compliance. Compliance with the Nebraska Uniform Prudent Management of Institutional Funds Act is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

Source: Laws 2007, LB136, § 7.
Effective date September 1, 2007.

58-617 Application to existing institutional funds. The Nebraska Uniform Prudent Management of Institutional Funds Act applies to institutional funds existing on or established after September 1, 2007. As applied to institutional funds existing on September 1, 2007, the act governs only decisions made or actions taken on or after that date.

Source: Laws 2007, LB136, § 8.
Effective date September 1, 2007.

58-618 Relation to Electronic Signatures in Global and National Commerce Act. The Nebraska Uniform Prudent Management of Institutional Funds Act modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., as the act existed on September 1, 2007, but does not modify, limit, or supersede section 101 of that act, 15 U.S.C. 7001(a), or authorize electronic delivery of any of the notices described in section 103 of that act, 15 U.S.C. 7003(b).

Source: Laws 2007, LB136, § 9.
Effective date September 1, 2007.

58-619 Uniformity of application and construction. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: Laws 2007, LB136, § 10.
Effective date September 1, 2007.

CHAPTER 60

MOTOR VEHICLES

Article.

1. Motor Vehicle Certificate of Title Act. 60-101 to 60-173.
3. Motor Vehicle Registration. 60-301 to 60-3,221.
4. Motor Vehicle Operators' Licenses.
 - (e) General Provisions. 60-462 to 60-470.02.
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 - (h) Provisions Applicable to Operation of Commercial Motor Vehicles. 60-4,147.02, 60-4,164.01.
 - (k) Point System. 60-4,182.
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 - (d) Accidents and Accident Reporting. 60-696 to 60-6,107.
 - (k) Stopping, Standing, Parking, and Backing Up. 60-6,164.
 - (n) Speed Restrictions. 60-6,186.
 - (o) Alcohol and Drug Violations. 60-6,197.03 to 60-6,202.
 - (t) Windshields, Windows, and Mirrors. 60-6,261.
 - (u) Occupant Protection Systems. 60-6,265, 60-6,267.
 - (y) Size, Weight, and Load. 60-6,301, 60-6,304.
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14. Motor Vehicle Industry Licensing. 60-1411.01, 60-1419.
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ARTICLE 1

MOTOR VEHICLE CERTIFICATE OF TITLE ACT

Section.

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|------------|---|
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| 60-123. | Motor vehicle, defined. |
| 60-134. | Truck, defined. |
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- 60-145. Motor vehicle used as taxi or limousine; disclosure on face of certificate of title required.
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- 60-147. Mobile home or cabin trailer; application; contents; mobile home transfer statement.
- 60-152. Certificate of title; issuance; delivery of copies; seal; county clerk or designated official; powers and duties.
- 60-153. Certificate of title; form; contents; secure power-of-attorney form.
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- 60-164. Liens on motor vehicles; when valid; notation on certificate; inventory, exception; priority; adjustment to rental price; how construed; notation of cancellation; failure to deliver certificate; damages; release.
- 60-166. New certificate of title; issued when; proof required; processing of application.
- 60-168. Certificate of title; loss or mutilation; duplicate certificate; subsequent purchaser, rights; recovery of original; duty of owner.
- 60-168.01. Certificate of title; failure to note required brand or lien; notice to holder of title; corrected certificate of title; failure of holder to deliver certificate; effect.
- 60-168.02. Certificate of title in dealer's name; issuance authorized; documentation and fees required; dealer; duties.
- 60-173. Salvage branded certificate of title; insurance company; total loss settlement; when issued.

60-101 Act, how cited. Sections 60-101 to 60-197 shall be known and may be cited as the Motor Vehicle Certificate of Title Act.

Source: Laws 2005, LB 276, § 1; Laws 2006, LB 663, § 1; Laws 2006, LB 1061, § 6; Laws 2007, LB286, § 1. Effective date September 1, 2007.

60-102 Definitions, where found. For purposes of the Motor Vehicle Certificate of Title Act, unless the context otherwise requires, the definitions found in sections 60-103 to 60-136.01 shall be used.

Source: Laws 2005, LB 276, § 2; Laws 2007, LB286, § 2. Effective date September 1, 2007.

60-114 Farm trailer, defined. Farm trailer means a trailer or semitrailer belonging to a farmer or rancher and used wholly and exclusively to carry supplies to or from the owner's farm or ranch, used by a farmer or rancher to carry his or her own agricultural products as defined in section 60-304 to or from storage or market, or used by a farmer or rancher for hauling of supplies or agricultural products in exchange of services.

Source: Laws 2005, LB 276, § 14; Laws 2007, LB286, § 3. Effective date September 1, 2007.

60-117 Historical vehicle, defined. Historical vehicle means a motor vehicle or trailer which is thirty or more years old, which is essentially unaltered from the original manufacturer's specifications, and which is, because of its significance, being collected, preserved, restored, or maintained by a collector as a leisure pursuit.

Source: Laws 2005, LB 276, § 17; Laws 2006, LB 663, § 2; Laws 2007, LB286, § 4.
Effective date September 1, 2007.

60-119.01 Low-speed vehicle, defined. Low-speed vehicle means a vehicle that (1) cannot travel more than twenty-five miles per hour on a paved, level surface, (2) complies with 49 C.F.R. part 571, as such part existed on January 1, 2007, or (3) is designated by the manufacturer as an off-road or low-speed vehicle.

Source: Laws 2007, LB286, § 5.
Effective date September 1, 2007.

60-123 Motor vehicle, defined. Motor vehicle means any vehicle propelled by any power other than muscular power except (1) mopeds, (2) farm tractors, (3) self-propelled equipment designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil and crops, agricultural floater-spreader implements, and other implements of husbandry designed for and used primarily for tilling the soil and harvesting crops or feeding livestock, (4) power unit hay grinders or a combination which includes a power unit and a hay grinder when operated without cargo, (5) vehicles which run only on rails or tracks, (6) off-road designed vehicles, including, but not limited to, golf carts, go-carts, riding lawnmowers, garden tractors, all-terrain vehicles, snowmobiles registered or exempt from registration under sections 60-3,207 to 60-3,219, and minibikes, (7) road and general-purpose construction and maintenance machinery not designed or used primarily for the transportation of persons or property, including, but not limited to, ditchdigging apparatus, asphalt spreaders, bucket loaders, leveling graders, earthmoving carryalls, power shovels, earthmoving equipment, and crawler tractors, (8) self-propelled chairs used by persons who are disabled, (9) electric personal assistive mobility devices, and (10) low-speed vehicles.

Source: Laws 2005, LB 276, § 23; Laws 2006, LB 765, § 1; Laws 2007, LB286, § 6.
Effective date September 1, 2007.

60-134 Truck, defined. Truck means any motor vehicle designed, used, or maintained primarily for the transportation of property or designated as a truck by the manufacturer.

Source: Laws 2005, LB 276, § 34; Laws 2007, LB286, § 7.
Effective date September 1, 2007.

60-136.01 Vehicle identification number, defined. Vehicle identification number means a series of English letters or Arabic or Roman numerals assigned to a vehicle for identification purposes.

Source: Laws 2007, LB286, § 8.
Effective date September 1, 2007.

60-137 Act; applicability. (1) The Motor Vehicle Certificate of Title Act applies to all vehicles as defined in the act, except:

- (a) Farm trailers;
- (b) Low-speed vehicles;

(c) Well-boring apparatus, backhoes, bulldozers, and front-end loaders; and

(d) Trucks and buses from other jurisdictions required to pay registration fees under the Motor Vehicle Registration Act, except a vehicle registered or eligible to be registered as part of a fleet of apportionable vehicles under section 60-3,198.

(2) All new all-terrain vehicles and minibikes sold on or after January 1, 2004, shall be required to have a certificate of title. An owner of an all-terrain vehicle or minibike sold prior to such date may apply for a certificate of title for such all-terrain vehicle or minibike as provided in rules and regulations of the department.

(3) An owner of a utility trailer may apply for a certificate of title upon compliance with the Motor Vehicle Certificate of Title Act.

Source: Laws 2005, LB 276, § 37; Laws 2006, LB 765, § 2; Laws 2007, LB286, § 9.
Effective date September 1, 2007.

Cross Reference

Motor Vehicle Registration Act, see section 60-301.

60-145 Motor vehicle used as taxi or limousine; disclosure on face of certificate of title required. For any motor vehicle which is to be used as a taxi or limousine, the application and the certificate of title shall show on the face thereof that such vehicle is being used or has been used as a taxi or limousine and such subsequent certificates of title shall show the same information.

Source: Laws 2005, LB 276, § 45; Laws 2007, LB286, § 10.
Effective date September 1, 2007.

60-146 Application; identification inspection required; exceptions; form; procedure; additional inspection authorized. (1) An application for a certificate of title for a vehicle shall include a statement that an identification inspection has been conducted on the vehicle unless (a) the title sought is a salvage branded certificate of title or a nontransferable certificate of title, (b) the surrendered ownership document is a Nebraska certificate of title, a manufacturer's statement of origin, an importer's statement of origin, a United States Government Certificate of Release of a vehicle, or a nontransferable certificate of title, (c) the application contains a statement that the vehicle is to be registered under section 60-3,198, (d) the vehicle is a cabin trailer, (e) the title sought is the first title for the vehicle sold directly by the manufacturer of the vehicle to a dealer franchised by the manufacturer, or (f) the vehicle was sold at an auction authorized by the manufacturer and purchased by a dealer franchised by the manufacturer of the vehicle.

(2) The department shall prescribe a form to be executed by a dealer and submitted with an application for a certificate of title for vehicles exempt from inspection pursuant to subdivision (1)(e) or (f) of this section. The form shall clearly identify the vehicle and state under penalty of law that the vehicle is exempt from inspection.

(3) The statement that an identification inspection has been conducted shall be furnished by the county sheriff of any county or by any other holder of a certificate of training issued pursuant to section 60-183, shall be in a format as determined by the department, and shall expire ninety days after the date of the inspection. The county clerk or designated county official shall accept a certificate of inspection, approved by the superintendent, from an officer of a state police agency of another state.

(4) The identification inspection shall include examination and notation of the then current odometer reading, if any, and a comparison of the vehicle identification number with the number listed on the ownership records, except that if a lien is registered against a vehicle and recorded on the vehicle's ownership records, the county clerk or designated county official shall provide a copy of the ownership records for use in making such comparison. If such numbers are not identical, if there is reason to believe further inspection is necessary, or if the inspection is for a Nebraska assigned number, the person performing the inspection shall make a further inspection of the vehicle which may include, but shall not be limited to, examination of other identifying numbers placed on the vehicle by the manufacturer and an inquiry into the numbering system used by the state issuing such ownership records to determine ownership of a vehicle. The identification inspection shall also include a statement that the vehicle identification number has been checked for entry in the National Crime Information Center and the Nebraska Crime Information Service. In the case of an assembled vehicle, the identification inspection shall include, but not be limited to, an examination of the records showing the date of receipt and source of each major component part. No identification inspection shall be conducted unless all major component parts are properly attached to the vehicle in the correct location.

(5) If there is cause to believe that odometer fraud exists, written notification shall be given to the office of the Attorney General. If after such inspection the sheriff or his or her designee determines that the vehicle is not the vehicle described by the ownership records, no statement shall be issued.

(6) The department, county clerk, or designated county official may also request an identification inspection of a vehicle to determine if it meets the definition of motor vehicle as defined in section 60-123.

Source: Laws 2005, LB 276, § 46; Laws 2006, LB 765, § 4; Laws 2007, LB286, § 11.
Effective date September 1, 2007.

60-147 Mobile home or cabin trailer; application; contents; mobile home transfer statement. (1) An application for a certificate of title for a mobile home or cabin trailer shall be accompanied by a certificate that states that sales or use tax has been paid on the purchase of the mobile home or cabin trailer or that the transfer of title was exempt from sales and use taxes. The county clerk or designated county official shall issue a certificate of title for a mobile home or cabin trailer but shall not deliver the certificate of title unless the certificate required under this subsection accompanies the application for certificate of title for the mobile home or cabin trailer, except that the failure of the application to be accompanied

by such certificate shall not prevent the notation of a lien on the certificate of title to the mobile home or cabin trailer pursuant to section 60-164 and delivery to the holder of the first lien.

(2) An application for a certificate of title to a mobile home shall be accompanied by a mobile home transfer statement prescribed by the Tax Commissioner. The mobile home transfer statement shall be filed by the applicant with the county clerk or designated county official of the county of application for title. The county clerk or designated county official shall issue a certificate of title to a mobile home but shall not deliver the certificate of title unless the mobile home transfer statement accompanies the application for title, except that the failure to provide the mobile home transfer statement shall not prevent the notation of a lien on the certificate of title to the mobile home pursuant to section 60-164 and delivery to the holder of the first lien.

Source: Laws 2005, LB 276, § 47; Laws 2007, LB166, § 1; Laws 2007, LB334, § 9.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 166, section 1, with LB 334, section 9, to reflect all amendments.

Note: The changes made by LB 166 became effective March 8, 2007. The changes made by LB 334 became operative July 1, 2007.

60-152 Certificate of title; issuance; delivery of copies; seal; county clerk or designated official; powers and duties.

(1) The county clerk or designated county official shall issue a certificate of title for a vehicle in duplicate and retain one copy in his or her office. An electronic copy, in a form prescribed by the department, shall be transmitted on the day of issuance to the department. The county clerk or designated county official shall sign and affix the appropriate seal to the original certificate of title and, if there are no liens on the vehicle, deliver the certificate to the applicant. If there are one or more liens on the vehicle, the certificate of title shall be delivered or mailed to the holder of the first lien on the day of issuance.

(2) The county clerks or county treasurers of the various counties shall adopt a circular seal with the words County Clerk of (insert name) County or County Treasurer of (insert name) County thereon. Such seal shall be used by the county clerk or county treasurer or the deputy or legal authorized agent of such officer, without charge to the applicant, on any certificate of title, application for certificate of title, duplicate copy, assignment or reassignment, power of attorney, statement, or affidavit pertaining to the issuance of a Nebraska certificate of title. The designated county official or the deputy or legal authorized agent of such officer shall use the seal of the county, without charge to the applicant, on any such document.

(3) The department shall prescribe a uniform method of numbering certificates of title.

(4) The county clerk or designated county official shall (a) file all certificates of title according to rules and regulations adopted and promulgated by the department, (b) maintain in the office indices for such certificates of title, (c) be authorized to destroy all previous records five years after a subsequent transfer has been made on a vehicle, and (d) be authorized to

destroy all certificates of title and all supporting records and documents which have been on file for a period of five years or more from the date of filing the certificate or a notation of lien, whichever occurs later.

Source: Laws 2005, LB 276, § 52; Laws 2007, LB286, § 12.
Effective date September 1, 2007.

60-153 Certificate of title; form; contents; secure power-of-attorney form. (1) A certificate of title shall be printed upon safety security paper to be selected by the department. The certificate of title, manufacturer's statement of origin, and assignment of manufacturer's certificate shall be upon forms prescribed by the department and may include, but shall not be limited to, county of issuance, date of issuance, certificate of title number, previous certificate of title number, vehicle identification number, year, make, model, and body type of the vehicle, name and residential and mailing address of the owner, acquisition date, issuing county clerk's or designated county official's signature and official seal, and sufficient space for the notation and release of liens, mortgages, or encumbrances, if any. A certificate of title issued on or after September 1, 2007, shall include the words "void if altered". A certificate of title that is altered shall be deemed a mutilated certificate of title. The certificate of title of an all-terrain vehicle or minibike shall include the words "not to be registered for road use".

(2) An assignment of certificate of title shall appear on each certificate of title and shall include, but not be limited to, a statement that the owner of the vehicle assigns all his or her right, title, and interest in the vehicle, the name and address of the assignee, the name and address of the lienholder or secured party, if any, and the signature of the owner or the owner's parent, legal guardian, foster parent, or agent in the case of an owner who is a handicapped or disabled person as defined in section 18-1738.

(3) A reassignment by a dealer shall appear on each certificate of title and shall include, but not be limited to, a statement that the dealer assigns all his or her right, title, and interest in the vehicle, the name and address of the assignee, the name and address of the lienholder or secured party, if any, and the signature of the dealer or designated representative. Reassignments shall be printed on the reverse side of each certificate of title as many times as convenient.

(4) The department may prescribe a secure power-of-attorney form and may contract with one or more persons to develop, provide, sell, and distribute secure power-of-attorney forms in the manner authorized or required by the federal Truth in Mileage Act of 1986 and any other federal law or regulation. Any secure power-of-attorney form authorized pursuant to a contract shall conform to the terms of the contract and be in strict compliance with the requirements of the department.

Source: Laws 2005, LB 276, § 53; Laws 2007, LB286, § 13.
Effective date September 1, 2007.

60-157 Repealed. Laws 2007, LB 286, § 57.

60-164 Liens on motor vehicles; when valid; notation on certificate; inventory, exception; priority; adjustment to rental price; how construed; notation of cancellation; failure to deliver certificate; damages; release. (1) Except as provided in section 60-165, the provisions of article 9, Uniform Commercial Code, shall never be construed to apply to or to permit or require the deposit, filing, or other record whatsoever of a security agreement, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or similar instrument or any copy of the same covering a vehicle. Any mortgage, conveyance intended to operate as a security agreement as provided by article 9, Uniform Commercial Code, trust receipt, conditional sales contract, or other similar instrument covering a vehicle, if such instrument is accompanied by delivery of such manufacturer's or importer's certificate and followed by actual and continued possession of the same by the holder of such instrument or, in the case of a certificate of title, if a notation of the same has been made by the county clerk, designated county official, or department on the face thereof, shall be valid as against the creditors of the debtor, whether armed with process or not, and subsequent purchasers, secured parties, and other lienholders or claimants but otherwise shall not be valid against them, except that during any period in which a vehicle is inventory, as defined in section 9-102, Uniform Commercial Code, held for sale by a person or corporation that is required to be licensed as provided in Chapter 60, article 14, and is in the business of selling such vehicles, the filing provisions of article 9, Uniform Commercial Code, as applied to inventory, shall apply to a security interest in such vehicle created by such person or corporation as debtor without the notation of lien on the instrument of title. A buyer of a vehicle at retail from a dealer required to be licensed as provided in Chapter 60, article 14, shall take such vehicle free of any security interest.

(2) Subject to subsection (1) of this section, all liens, security agreements, and encumbrances noted upon a certificate of title shall take priority according to the order of time in which the same are noted thereon by the county clerk, designated county official, or department. Exposure for sale of any vehicle by the owner thereof with the knowledge or with the knowledge and consent of the holder of any lien, security agreement, or encumbrance on such vehicle shall not render the same void or ineffective as against the creditors of such owner or holder of subsequent liens, security agreements, or encumbrances upon such vehicle.

(3) The holder of a security agreement, trust receipt, conditional sales contract, or similar instrument, upon presentation of such instrument to the department, if the certificate of title was issued by the department, or to any county clerk or designated county official, together with the certificate of title and the fee prescribed for notation of lien, may have a notation of such lien made on the face of such certificate of title. The county clerk or designated county official or the department shall enter the notation and the date thereof over the signature of such officer and the official seal. If noted by a county clerk or designated county official, he or she shall on that day notify the department which shall note the lien on its records. The county clerk or designated county official or the department shall also indicate by appropriate

notation and on such instrument itself the fact that such lien has been noted on the certificate of title.

(4) A transaction does not create a sale or a security interest in a vehicle, other than an all-terrain vehicle or a minibike, merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the vehicle.

(5) The county clerk or designated county official or the department, upon receipt of a lien instrument duly signed by the owner in the manner prescribed by law governing such lien instruments together with the fee prescribed for notation of lien, shall notify the first lienholder to deliver to the county clerk or designated county official or the department, within fifteen days after the date of notice, the certificate of title to permit notation of such other lien and, after notation of such other lien, the county clerk or designated county official or the department shall deliver the certificate of title to the first lienholder. The holder of a certificate of title who refuses to deliver a certificate of title to the county clerk or designated county official or the department for the purpose of showing such other lien on such certificate of title within fifteen days after the date of notice shall be liable for damages to such other lienholder for the amount of damages such other lienholder suffered by reason of the holder of the certificate of title refusing to permit the showing of such lien on the certificate of title.

(6) When a lien is discharged, the holder shall, within fifteen days after payment is received, note a cancellation of the lien on the certificate of title over his, her, or its signature and deliver the certificate of title to the county clerk or designated county official or the department, which shall note the cancellation of the lien on the face of the certificate of title and on the records of such office. If delivered to a county clerk or designated county official, he or she shall on that day notify the department which shall note the cancellation on its records. The county clerk or designated county official or the department shall then return the certificate of title to the owner or as otherwise directed by the owner. The cancellation of lien shall be noted on the certificate of title without charge. If the holder of the title cannot locate a lienholder, a lien may be discharged ten years after the date of filing by presenting proof that thirty days have passed since the mailing of a written notice by certified mail, return receipt requested, to the last-known address of the lienholder.

Source: Laws 2005, LB 276, § 64; Laws 2007, LB286, § 14.
Effective date September 1, 2007.

60-166 New certificate of title; issued when; proof required; processing of application. (1) In the event of (a) the transfer of ownership of a vehicle by operation of law as upon inheritance, devise, or bequest, order in bankruptcy, insolvency, replevin, or execution sale or as provided in sections 30-24,125, 52-601.01 to 52-605, 60-1901 to 60-1911, and 60-2401 to 60-2411, (b) the engine of a vehicle being replaced by another engine, (c) a vehicle being sold to satisfy storage or repair charges, or (d) repossession being had upon default in performance of the terms of a chattel mortgage, trust receipt, conditional sales contract, or other like agreement, the county clerk or designated county official of any county or the department, if the last certificate of title was issued by the department, upon

the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or when that is not possible, upon presentation of satisfactory proof of ownership and right of possession to such vehicle, and upon payment of the appropriate fee and the presentation of an application for certificate of title, may issue to the applicant a certificate of title thereto. If the prior certificate of title issued for such vehicle provided for joint ownership with right of survivorship, a new certificate of title shall be issued to a subsequent purchaser upon the assignment of the prior certificate of title by the surviving owner and presentation of satisfactory proof of death of the deceased owner. Only an affidavit by the person or agent of the person to whom possession of such vehicle has so passed, setting forth facts entitling him or her to such possession and ownership, together with a copy of the journal entry, court order, or instrument upon which such claim of possession and ownership is founded, shall be considered satisfactory proof of ownership and right of possession, except that if the applicant cannot produce such proof of ownership, he or she may submit to the department such evidence as he or she may have, and the department may thereupon, if it finds the evidence sufficient, issue the certificate of title or authorize the county clerk or designated county official to issue a certificate of title, as the case may be.

(2) If from the records in the office of the county clerk or designated county official or the department there appear to be any liens on such vehicle, such certificate of title shall contain a statement of such liens unless the application is accompanied by proper evidence of their satisfaction or extinction.

Source: Laws 2005, LB 276, § 66; Laws 2007, LB286, § 15.
Effective date September 1, 2007.

60-168 Certificate of title; loss or mutilation; duplicate certificate; subsequent purchaser, rights; recovery of original; duty of owner. (1) In the event of a lost or mutilated certificate of title, the owner of the vehicle or the holder of a lien on the vehicle shall apply, upon a form prescribed by the department, to the department, if the certificate of title was issued by the department, or to any county clerk or designated county official for a duplicate certificate of title and shall pay the fee prescribed by section 60-156. The application shall be signed and sworn to by the person making the application or a person authorized to sign under section 60-151. Thereupon the county clerk or designated county official, with the approval of the department, or the department shall issue a duplicate certificate of title to the person entitled to receive the certificate of title. If the records of the title have been destroyed pursuant to section 60-152, the county clerk or designated county official shall issue a duplicate certificate of title to the person entitled to receive the same upon such showing as the county clerk or designated county official may deem sufficient. If the applicant cannot produce such proof of ownership, he or she may apply directly to the department and submit such evidence as he or she may have, and the department may, if it finds the evidence sufficient, authorize the county clerk or designated county official to issue a duplicate certificate of title. A duplicate certificate of title so issued shall show only those

unreleased liens of record. The new purchaser shall be entitled to receive an original certificate of title upon presentation of the assigned duplicate copy of the certificate of title, properly assigned to the new purchaser, to the county clerk or designated county official prescribed in section 60-144.

(2) Any purchaser of a vehicle for which a certificate of title was lost or mutilated may at the time of purchase require the seller of the same to indemnify him or her and all subsequent purchasers of the vehicle against any loss which he, she, or they may suffer by reason of any claim presented upon the original certificate. In the event of the recovery of the original certificate of title by the owner, he or she shall forthwith surrender the same to the county clerk or designated county official or the department for cancellation.

Source: Laws 2005, LB 276, § 68; Laws 2007, LB286, § 16.
Effective date September 1, 2007.

60-168.01 Certificate of title; failure to note required brand or lien; notice to holder of title; corrected certificate of title; failure of holder to deliver certificate; effect. The department, upon receipt of clear and convincing evidence of a failure to note a required brand or failure to note a lien on a certificate of title, shall notify the holder of such certificate of title to deliver to the county clerk or designated county official or the department, within fifteen days after the date on the notice, such certificate of title to permit the noting of such brand or lien. After notation, the county clerk or designated county official or the department shall deliver the corrected certificate of title to the holder as provided by section 60-152. If a holder fails to deliver a certificate of title to the county clerk or designated county official or to the department, within fifteen days after the date on the notice for the purpose of noting such brand or lien on the certificate of title, the department shall cancel the certificate of title. This section does not apply when noting a lien in accordance with subsection (5) of section 60-164.

Source: Laws 2007, LB286, § 17.
Effective date September 1, 2007.

60-168.02 Certificate of title in dealer's name; issuance authorized; documentation and fees required; dealer; duties. (1) When a motor vehicle, commercial trailer, semitrailer, or cabin trailer is purchased by a motor vehicle dealer or trailer dealer and the original assigned certificate of title has been lost or mutilated, the dealer selling such motor vehicle or trailer may apply for an original certificate of title in the dealer's name. The following documentation and fees shall be submitted by the dealer:

- (a) An application for a certificate of title in the name of such dealer;
- (b) A photocopy from the dealer's records of the front and back of the lost or mutilated original certificate of title assigned to a dealer with a reassignment to a purchaser;
- (c) A notarized affidavit from the purchaser of such motor vehicle or trailer for which the original assigned certificate of title was lost or mutilated stating that the original assigned certificate of title was lost or mutilated; and
- (d) The appropriate certificate of title fee.

(2) The application and affidavit shall be on forms prescribed by the department. When the motor vehicle dealer or trailer dealer receives the new certificate of title in such dealer's name and assigns it to the purchaser, the dealer shall record the original sale date and provide the purchaser with a copy of the front and back of the original lost or mutilated certificate of title as evidence as to why the purchase date of the motor vehicle or trailer is prior to the issue date of the new certificate of title.

Source: Laws 2007, LB286, § 18.
Effective date September 1, 2007.

60-173 Salvage branded certificate of title; insurance company; total loss settlement; when issued. When an insurance company acquires a salvage vehicle through payment of a total loss settlement on account of damage, the company shall obtain the certificate of title from the owner, surrender such certificate of title to the county clerk or designated county official, and make application for a salvage branded certificate of title which shall be assigned when the company transfers ownership. An insurer shall take title to a salvage vehicle for which a total loss settlement is made unless the owner of the salvage vehicle elects to retain the salvage vehicle. If the owner elects to retain the salvage vehicle, the insurance company shall notify the department of such fact in a format prescribed by the department. The department shall immediately enter the salvage brand onto the computerized record of the vehicle. The insurance company shall also notify the owner of the owner's responsibility to comply with this section. The owner shall, within thirty days after the settlement of the loss, forward the properly endorsed acceptable certificate of title to the county clerk or designated county official in the county designated in section 60-144. The county clerk or designated county official shall, upon receipt of the certificate of title, issue a salvage branded certificate of title for the vehicle.

Source: Laws 2005, LB 276, § 73; Laws 2007, LB286, § 19.
Effective date September 1, 2007.

ARTICLE 3

MOTOR VEHICLE REGISTRATION

Section.

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- 60-3,205. Registration certificate; disciplinary actions; director; powers; procedure.

60-3,221. Towing of trailers; restrictions; section; how construed.

60-301 Act, how cited. Sections 60-301 to 60-3,221 shall be known and may be cited as the Motor Vehicle Registration Act.

Source: Laws 2005, LB 274, § 1; Laws 2006, LB 663, § 21; Laws 2007, LB286, § 20; Laws 2007, LB349, § 1; Laws 2007, LB570, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 286, section 20, with LB 349, section 1, and LB 570, section 1, to reflect all amendments.

Note: The changes made by LB 286 and LB 349 became effective September 1, 2007. The changes made by LB 570 became operative January 1, 2010.

60-302 Definitions, where found. For purposes of the Motor Vehicle Registration Act, unless the context otherwise requires, the definitions found in sections 60-303 to 60-360 shall be used.

Source: Laws 2005, LB 274, § 2; Laws 2007, LB286, § 21.
Effective date September 1, 2007.

60-308 Apportionable vehicle, defined. (1) Apportionable vehicle means any motor vehicle or trailer used or intended for use in two or more member jurisdictions that allocate or proportionally register motor vehicles or trailers and used for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property.

(2) Apportionable vehicle does not include any recreational vehicle, motor vehicle displaying restricted plates, city pickup and delivery vehicle, bus used in the transportation of chartered parties, or government-owned motor vehicle.

(3) An apportionable vehicle that is a power unit shall (a) have two axles and a gross vehicle weight or registered gross vehicle weight in excess of twenty-six thousand pounds or eleven thousand seven hundred ninety-three and four hundred one thousandths kilograms, (b) have three or more axles, regardless of weight, or (c) be used in combination when the weight of such combination exceeds twenty-six thousand pounds or eleven thousand seven hundred ninety-three and four hundred one thousandths kilograms gross vehicle weight. Vehicles or combinations of vehicles having a gross vehicle weight of twenty-six thousand pounds or eleven thousand seven hundred ninety-three and four hundred one thousandths kilograms or less and two-axle vehicles and buses used in the transportation of chartered parties may be proportionally registered at the option of the registrant.

Source: Laws 2005, LB 274, § 8; Laws 2007, LB286, § 22.
Effective date September 1, 2007.

60-311 Base jurisdiction, defined. Base jurisdiction means, for purposes of fleet registration, the jurisdiction where the registrant has an established place of business, where miles or kilometers are accrued by the fleet, and where operational records of such fleet are maintained or can be made available. For such purpose, there is hereby adopted and incorporated by reference section 1602 of Article XVI, International Registration Plan,

adopted by the American Association of Motor Vehicle Administrators, as such section existed on October 1, 2006.

Source: Laws 2005, LB 274, § 11; Laws 2006, LB 853, § 1; Laws 2007, LB239, § 1.
Effective date September 1, 2007.

60-324 Farm trailer, defined. Farm trailer means a trailer or semitrailer belonging to a farmer or rancher and used wholly and exclusively to carry supplies to or from the owner's farm or ranch, used by a farmer or rancher to carry his or her own agricultural products to or from storage or market, or used by a farmer or rancher for hauling of supplies or agricultural products in exchange of services. Farm trailer does not include a trailer so used when attached to a farm tractor.

Source: Laws 2005, LB 274, § 24; Laws 2007, LB286, § 23.
Effective date September 1, 2007.

60-325 Farm truck, defined. Farm truck means a truck or sport utility vehicle, including any combination of a truck, truck-tractor, or sport utility vehicle, and a trailer or semitrailer, of a farmer or rancher (1) used exclusively to carry a farmer's or rancher's own supplies, farm equipment, and household goods to or from the owner's farm or ranch, (2) used by the farmer or rancher to carry his or her own agricultural products to or from storage or market, (3) used by a farmer or rancher in exchange of services in such hauling of supplies or agricultural products, or (4) used occasionally to carry camper units, to tow boats or cabin trailers, or to carry or tow museum pieces or historical vehicles, without compensation, to events for public display or educational purposes.

Source: Laws 2005, LB 274, § 25; Laws 2007, LB286, § 24.
Effective date September 1, 2007.

60-333 Historical vehicle, defined. Historical vehicle means a motor vehicle or trailer which is thirty or more years old, which is essentially unaltered from the original manufacturer's specifications, and which is, because of its significance, being collected, preserved, restored, or maintained by a collector as a leisure pursuit.

Source: Laws 2005, LB 274, § 33; Laws 2006, LB 663, § 22; Laws 2007, LB286, § 25.
Effective date September 1, 2007.

60-336.01 Low-speed vehicle, defined. Low-speed vehicle means a vehicle that (1) cannot travel more than twenty-five miles per hour on a paved, level surface, (2) complies with 49 C.F.R. part 571, as such part existed on January 1, 2007, or (3) is designated by the manufacturer as an off-road or low-speed vehicle.

Source: Laws 2007, LB286, § 26.
Effective date September 1, 2007.

60-339 Motor vehicle, defined. Motor vehicle means any vehicle propelled by any power other than muscular power except (1) mopeds, (2) farm tractors, (3) self-propelled equipment designed and used exclusively to carry and apply fertilizer, chemicals, or related

products to agricultural soil and crops, agricultural floater-spreader implements, and other implements of husbandry designed for and used primarily for tilling the soil and harvesting crops or feeding livestock, (4) power unit hay grinders or a combination which includes a power unit and a hay grinder when operated without cargo, (5) vehicles which run only on rails or tracks, (6) off-road designed vehicles, including, but not limited to, golf carts, go-carts, riding lawnmowers, garden tractors, all-terrain vehicles, snowmobiles registered or exempt from registration under sections 60-3,207 to 60-3,219, and minibikes, (7) road and general-purpose construction and maintenance machinery not designed or used primarily for the transportation of persons or property, including, but not limited to, ditchdigging apparatus, asphalt spreaders, bucket loaders, leveling graders, earthmoving carryalls, power shovels, earthmoving equipment, and crawler tractors, (8) self-propelled chairs used by persons who are disabled, (9) electric personal assistive mobility devices, and (10) low-speed vehicles.

Source: Laws 2005, LB 274, § 39; Laws 2007, LB286, § 27.
Effective date September 1, 2007.

60-342 Owner, defined. Owner means a person, firm, or corporation which holds a legal title of a motor vehicle or trailer. If (1) a motor vehicle or trailer is the subject of an agreement for the conditional sale thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, (2) a motor vehicle or trailer is subject to a lease of thirty days or more with an immediate right of possession vested in the lessee, or (3) a mortgagor of a motor vehicle or trailer is entitled to possession, then such conditional vendee, lessee, or mortgagor shall be deemed the owner for purposes of the Motor Vehicle Registration Act. For such purpose, there are hereby adopted and incorporated by reference the provisions of Article XI, International Registration Plan, adopted by the American Association of Motor Vehicle Administrators, as such provisions existed on October 1, 2006.

Source: Laws 2005, LB 274, § 42; Laws 2006, LB 853, § 2; Laws 2007, LB239, § 2.
Effective date September 1, 2007.

60-345 Passenger car, defined. Passenger car means a motor vehicle designed and used to carry ten passengers or less and not used for hire. Passenger car may include a sport utility vehicle.

Source: Laws 2005, LB 274, § 45; Laws 2007, LB286, § 28.
Effective date September 1, 2007.

60-351.01 Sport utility vehicle, defined. Sport utility vehicle means a high-performance motor vehicle weighing six thousand pounds or less designed to carry ten passengers or less or designated as a sport utility vehicle by the manufacturer.

Source: Laws 2007, LB286, § 29.
Effective date September 1, 2007.

60-355 Transporter, defined. Transporter means any person lawfully engaged in the business of transporting motor vehicles or trailers not his or her own solely for delivery thereof (1) by driving singly, (2) by driving in combinations by the towbar, fullmount, or saddlemount method or any combination thereof, or (3) when a truck or truck-tractor tows a trailer.

Source: Laws 2005, LB 274, § 55; Laws 2007, LB286, § 30.
Effective date September 1, 2007.

60-356 Truck, defined. Truck means a motor vehicle that is designed, used, or maintained primarily for the transportation of property or designated as a truck by the manufacturer.

Source: Laws 2005, LB 274, § 56; Laws 2007, LB286, § 31.
Effective date September 1, 2007.

60-378 Transporter plates; fee; records. (1) Any transporter doing business in this state may, in lieu of registering each motor vehicle or trailer which such transporter is transporting, upon payment of a fee of ten dollars, apply to the department for a transporter's certificate and one transporter license plate. Additional pairs of transporter certificates and transporter license plates may be procured for a fee of ten dollars each. Transporter license plates shall be displayed (a) upon the motor vehicle or trailer being transported or (b) upon a properly registered truck or truck-tractor which is a work or service vehicle in the process of towing a trailer which is itself being delivered by the transporter, and such registered truck or truck-tractor shall also display a transporter plate upon the front thereof. The applicant for a transporter plate shall keep for six years a record of each motor vehicle or trailer transported by him or her under this section, and such record shall be available to the department for inspection. Each applicant shall file with the department proof of his or her status as a bona fide transporter.

(2) Transporter license plates may be the same size as license plates issued for motorcycles, shall bear thereon a mark to distinguish them as transporter plates, and shall be serially numbered so as to distinguish them from each other. Such license plates may only be displayed upon the front of a driven motor vehicle of a lawful combination or upon the front of a motor vehicle driven singly or upon the rear of a trailer being towed.

Source: Laws 2005, LB 274, § 78; Laws 2007, LB286, § 32.
Effective date September 1, 2007.

60-385 Application; situs. Every owner of a motor vehicle or trailer required to be registered shall make application for registration to the county treasurer or designated county official of the county in which the motor vehicle or trailer has situs. The application shall be by any means designated by the department. A salvage branded certificate of title and a nontransferable certificate of title provided for in section 60-170 shall not be valid for registration purposes.

Source: Laws 2005, LB 274, § 85; Laws 2006, LB 765, § 6; Laws 2007, LB286, § 33.
Effective date September 1, 2007.

60-387 Proof of financial responsibility required. An application for registration of a motor vehicle shall be accompanied by proof of financial responsibility or evidence of insurance covering the motor vehicle. Proof of financial responsibility shall be evidenced by a copy of proof of financial responsibility filed pursuant to subdivision (2), (3), or (4) of section 60-528 bearing the seal of the department. Evidence of insurance shall give the effective dates of the automobile liability policy, which dates shall be evidence that the coverage is in effect on and following the date of registration, and shall designate, by explicit description or by appropriate reference, all motor vehicles covered. Evidence of insurance in the form of a certificate of insurance for fleet vehicles may include, as an appropriate reference, a designation that the insurance coverage is applicable to all vehicles owned by the named insured, or wording of similar effect, in lieu of an explicit description. Proof of financial responsibility also may be evidenced by (1) a check by the department or its agents of the motor vehicle insurance data base created under section 60-3,136 or (2) any other automated or electronic means as prescribed or developed by the department. For purposes of this section, fleet means a group of at least five vehicles that belong to the same owner.

Source: Laws 2005, LB 274, § 87; Laws 2007, LB286, § 34.
Effective date September 1, 2007.

60-393 Multiple vehicle registration. Any owner who has two or more motor vehicles or trailers required to be registered under the Motor Vehicle Registration Act may register all such motor vehicles or trailers on a calendar-year basis or on an annual basis for the same registration period beginning in a month chosen by the owner. When electing to establish the same registration period for all such motor vehicles or trailers, the owner shall pay the registration fee, the motor vehicle tax imposed in section 60-3,185, and the motor vehicle fee imposed in section 60-3,190 on each motor vehicle for the number of months necessary to extend its current registration period to the registration period under which all such motor vehicles or trailers will be registered. Credit shall be given for registration paid on each motor vehicle or trailer when the motor vehicle or trailer has a later expiration date than that chosen by the owner except as otherwise provided in sections 60-3,121, 60-3,122.02, and 60-3,128. Thereafter all such motor vehicles or trailers shall be registered on an annual basis starting in the month chosen by the owner.

Source: Laws 2005, LB 274, § 93; Laws 2007, LB570, § 4.
Operative date January 1, 2010.

60-395 Refund or credit of fees; when authorized. (1) Except as otherwise provided in subsection (2) of this section and sections 60-3,121, 60-3,122.02, and 60-3,128, the registration shall expire and the registered owner or lessee may, by returning the registration certificate, the license plates, and, when appropriate, the validation decals and by either making application on a form prescribed by the department to the county treasurer or designated county official of the occurrence of an event described in subdivisions (a) through

(e) of this subsection or, in the case of a change in situs, displaying to the county treasurer or designated county official the registration certificate of such other state as evidence of a change in situs, receive a refund of that part of the unused fees and taxes on motor vehicles or trailers based on the number of unexpired months remaining in the registration period from the date of any of the following events:

- (a) Upon transfer of ownership of any motor vehicle or trailer;
- (b) In case of loss of possession because of fire, theft, dismantlement, or junking;
- (c) When a salvage branded certificate of title is issued;
- (d) Whenever a type or class of motor vehicle or trailer previously registered is subsequently declared by legislative act or court decision to be illegal or ineligible to be operated or towed on the public roads and no longer subject to registration fees, the motor vehicle tax imposed in section 60-3,185, and the motor vehicle fee imposed in section 60-3,190;
- (e) Upon a trade-in or surrender of a motor vehicle under a lease; or
- (f) In case of a change in the situs of a motor vehicle or trailer to a location outside of this state.

(2) If the date of the event falls within the same calendar month in which the motor vehicle or trailer is acquired, no refund shall be allowed for such month.

(3) If the transferor or lessee acquires another motor vehicle at the time of the transfer, trade-in, or surrender, the transferor or lessee shall have the credit provided for in this section applied toward payment of the motor vehicle fees and taxes then owing. Otherwise, the transferor or lessee shall file a claim for refund with the county treasurer or designated county official upon an application form prescribed by the department.

(4) The registered owner or lessee shall make a claim for refund or credit of the fees and taxes for the unexpired months in the registration period within sixty days after the date of the event or shall be deemed to have forfeited his or her right to such refund or credit.

(5) For purposes of this section, the date of the event shall be: (a) In the case of a transfer or loss, the date of the transfer or loss; (b) in the case of a change in the situs, the date of registration in another state; (c) in the case of a trade-in or surrender under a lease, the date of trade-in or surrender; (d) in the case of a legislative act, the effective date of the act; and (e) in the case of a court decision, the date the decision is rendered.

(6) Application for registration or for reassignment of license plates and, when appropriate, validation decals to another motor vehicle or trailer shall be made within thirty days of the date of purchase.

(7) The county treasurer or designated county official shall refund the motor vehicle fee and registration fee from the fees which have not been transferred to the State Treasurer. The county treasurer shall make payment to the claimant from the undistributed motor vehicle taxes of the taxing unit where the tax money was originally distributed. No refund of less than two dollars shall be paid.

Source: Laws 2005, LB 274, § 95; Laws 2007, LB286, § 35; Laws 2007, LB570, § 5.

Note: The changes made by LB 286 became effective September 1, 2007. The changes made by LB 570 became operative January 1, 2010.

60-396 Credit of fees; vehicle disabled or removed from service. Whenever the registered owner files an application with the county treasurer or designated county official showing that a motor vehicle or trailer is disabled and has been removed from service, the registered owner may, by returning the registration certificate, the license plates, and, when appropriate, the validation decals or, in the case of the unavailability of such registration certificate or certificates, license plates, or validation decals, then by making an affidavit to the county treasurer or designated county official of such disablement and removal from service, receive a credit for a portion of the registration fee from the fee deposited with the State Treasurer at the time of registration based upon the number of unexpired months remaining in the registration year except as otherwise provided in sections 60-3,121, 60-3,122.02, and 60-3,128. The owner shall also receive a credit for the unused portion of the motor vehicle tax and fee based upon the number of unexpired months remaining in the registration year. When the owner registers a replacement motor vehicle or trailer at the time of filing such affidavit, the credit may be immediately applied against the registration fee and the motor vehicle tax and fee for the replacement motor vehicle or trailer. When no such replacement motor vehicle or trailer is so registered, the county treasurer or designated county official shall forward the application and affidavit, if any, to the State Treasurer who shall determine the amount, if any, of the allowable credit for the registration fee and issue a credit certificate to the owner. For the motor vehicle tax and fee, the county treasurer or designated county official shall determine the amount, if any, of the allowable credit and issue a credit certificate to the owner. When such motor vehicle or trailer is removed from service within the same month in which it was registered, no credits shall be allowed for such month. The credits may be applied against taxes and fees for new or replacement motor vehicles or trailers incurred within one year after cancellation of registration of the motor vehicle or trailer for which the credits were allowed. When any such motor vehicle or trailer is reregistered within the same registration year in which its registration has been canceled, the taxes and fees shall be that portion of the registration fee and the motor vehicle tax and fee for the remainder of the registration year.

Source: Laws 2005, LB 274, § 96; Laws 2007, LB570, § 6.
Operative date January 1, 2010.

60-397 Refund or credit; salvage branded certificate of title. If a motor vehicle or trailer has a salvage branded certificate of title issued as a result of an insurance company acquiring the motor vehicle or trailer through a total loss settlement, the prior owner of the motor vehicle or trailer who is a party to the settlement may receive a refund or credit of unused fees and taxes by (1) filing an application with the county treasurer or designated county official within sixty days after the date of the settlement stating that title to the motor vehicle or trailer was transferred as a result of the settlement and (2) returning the registration certificate, the license plates, and, when appropriate, the validation decals or, in the case of the unavailability of the registration certificate, license plates, or validation decals, filing an affidavit with the county treasurer or designated county official regarding the transfer of title

due to the settlement and the unavailability of the certificate, license plates, or validation decals. The owner may receive a refund or credit of the registration fees and motor vehicle taxes and fees for the unexpired months remaining in the registration year determined based on the date when the motor vehicle or trailer was damaged and became unavailable for service. When the owner registers a replacement motor vehicle or trailer at the time of filing such affidavit, the credit may be immediately applied against the registration fee and the motor vehicle tax and fee for the replacement motor vehicle or trailer. When no such replacement motor vehicle or trailer is so registered, the county treasurer or designated county official shall refund the unused registration fees. If the motor vehicle or trailer was damaged and became unavailable for service during the same month in which it was registered, no refund or credit shall be allowed for such month. When any such motor vehicle or trailer is reregistered within the same registration year in which its registration has been canceled, the taxes and fees shall be that portion of the registration fee and the motor vehicle tax and fee for the remainder of the registration year.

Source: Laws 2005, LB 274, § 97; Laws 2007, LB286, § 36.
Effective date September 1, 2007.

60-3,104 Types of license plates. The department shall issue the following types of license plates:

- (1) Amateur radio station license plates issued pursuant to section 60-3,126;
- (2) Apportionable vehicle license plates issued pursuant to section 60-3,203;
- (3) Boat dealer license plates issued pursuant to section 60-379;
- (4) Bus license plates issued pursuant to section 60-3,144;
- (5) Commercial motor vehicle license plates issued pursuant to section 60-3,147;
- (6) Dealer or manufacturer license plates issued pursuant to sections 60-3,114 and 60-3,115;
- (7) Disabled veteran license plates issued pursuant to section 60-3,124;
- (8) Farm trailer license plates issued pursuant to section 60-3,151;
- (9) Farm truck license plates issued pursuant to section 60-3,146;
- (10) Farm trucks with a gross weight of over sixteen tons license plates issued pursuant to section 60-3,146;
- (11) Fertilizer trailer license plates issued pursuant to section 60-3,151;
- (12) Film vehicle license plates issued pursuant to section 60-383;
- (13) Gold Star Family license plates issued pursuant to sections 60-3,122.01 and 60-3,122.02;
- (14) Handicapped or disabled person license plates issued pursuant to section 60-3,113;
- (15) Historical vehicle license plates issued pursuant to sections 60-3,130 to 60-3,134;
- (16) Local truck license plates issued pursuant to section 60-3,145;
- (17) Motor vehicle license plates for motor vehicles owned or operated by the state, counties, municipalities, or school districts issued pursuant to section 60-3,105;
- (18) Motor vehicles exempt pursuant to section 60-3,107;
- (19) Motorcycle license plates issued pursuant to section 60-3,100;
- (20) Nebraska Cornhusker Spirit Plates issued pursuant to sections 60-3,127 to 60-3,129;

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- (21) Nonresident owner thirty-day license plates issued pursuant to section 60-382;
- (22) Passenger car having a seating capacity of ten persons or less and not used for hire issued pursuant to section 60-3,143;
- (23) Passenger car having a seating capacity of ten persons or less and used for hire issued pursuant to section 60-3,143;
- (24) Pearl Harbor license plates issued pursuant to section 60-3,122;
- (25) Personal-use dealer license plates issued pursuant to section 60-3,116;
- (26) Personalized message license plates for motor vehicles and cabin trailers, except commercial motor vehicles registered for over ten tons gross weight, issued pursuant to sections 60-3,118 to 60-3,121;
- (27) Prisoner-of-war license plates issued pursuant to section 60-3,123;
- (28) Purple Heart license plates issued pursuant to section 60-3,125;
- (29) Recreational vehicle license plates issued pursuant to section 60-3,151;
- (30) Repossession license plates issued pursuant to section 60-375;
- (31) Trailer license plates issued for trailers owned or operated by the state, counties, municipalities, or school districts issued pursuant to section 60-3,106;
- (32) Trailer license plates issued pursuant to section 60-3,100;
- (33) Trailers exempt pursuant to section 60-3,108;
- (34) Transporter license plates issued pursuant to section 60-378;
- (35) Trucks or combinations of trucks, truck-tractors, or trailers which are not for hire and engaged in soil and water conservation work and used for the purpose of transporting pipe and equipment exclusively used by such contractors for soil and water conservation construction license plates issued pursuant to section 60-3,149;
- (36) Utility trailer license plates issued pursuant to section 60-3,151; and
- (37) Well-boring apparatus and well-servicing equipment license plates issued pursuant to section 60-3,109.

Source: Laws 2005, LB 274, § 104; Laws 2006, LB 663, § 23; Laws 2007, LB286, § 37; Laws 2007, LB570, § 7.

Note: The changes made by LB 286 became effective September 1, 2007. The changes made by LB 570 became operative January 1, 2010.

60-3,107 Tax-exempt motor vehicles; distinctive plates. The department may provide distinctive license plates issued for use on motor vehicles which are tax exempt pursuant to subdivision (6) of section 60-3,185. License plates on such motor vehicles shall display, in addition to the license number, the words tax exempt.

Source: Laws 2005, LB 274, § 107; Laws 2007, LB286, § 38.
Effective date September 1, 2007.

60-3,118 Personalized message license plates; conditions. (1) In lieu of the license plates provided for by section 60-3,100, the department shall issue personalized message

license plates for motor vehicles, trailers, semitrailers, or cabin trailers, except for motor vehicles and trailers registered under section 60-3,198, to all applicants who meet the requirements of sections 60-3,119 to 60-3,121. Personalized message license plates shall be the same size and of the same basic design as regular license plates issued pursuant to section 60-3,100. The characters used shall consist only of letters and numerals of the same size and design and shall comply with the requirements of subdivision (1)(a) of section 60-3,100. A maximum of seven characters may be used, except that for motorcycles, a maximum of six characters may be used.

(2) The following conditions apply to all personalized message license plates:

(a) County prefixes shall not be allowed except in counties using the alphanumeric system for motor vehicle registration. The numerals in the county prefix shall be the numerals assigned to the county, pursuant to subsection (2) of section 60-370, in which the motor vehicle or cabin trailer is registered. Renewal of a personalized message license plate containing a county prefix shall be conditioned upon the motor vehicle or cabin trailer being registered in such county. The numerals in the county prefix, including the hyphen or any other unique design for an existing license plate style, count against the maximum number of characters allowed under this section;

(b) The characters in the order used shall not conflict with or duplicate any number used or to be used on the regular license plates or any number or license plate already approved pursuant to sections 60-3,118 to 60-3,121;

(c) The characters in the order used shall not express, connote, or imply any obscene or objectionable words or abbreviations; and

(d) An applicant receiving a personalized message license plate for a farm truck with a gross weight of over sixteen tons or a commercial truck or truck-tractor with a gross weight of five tons or over shall affix the appropriate tonnage decal to such license plate.

(3) The department shall have sole authority to determine if the conditions prescribed in subsection (2) of this section have been met.

Source: Laws 2005, LB 274, § 118; Laws 2007, LB286, § 39.
Effective date September 1, 2007.

60-3,122 Pearl Harbor plates; fee. (1) Any person may, in addition to the application required by section 60-385, apply to the department for license plates designed by the department to indicate that he or she is a survivor of the Japanese attack on Pearl Harbor if he or she:

(a) Was a member of the United States Armed Forces on December 7, 1941;

(b) Was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. Hawaii time at Pearl Harbor, the island of Oahu, or offshore at a distance not to exceed three miles;

(c) Was discharged or otherwise separated with a characterization of honorable from the United States Armed Forces; and

(d) Holds a current membership in a Nebraska Chapter of the Pearl Harbor Survivors Association.

(2) The license plates shall be issued upon the applicant paying the regular license fee and an additional fee of five dollars and furnishing proof satisfactory to the department that the applicant fulfills the requirements provided by subsection (1) of this section. The additional fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund. Only one motor vehicle, trailer, semitrailer, or cabin trailer owned by the applicant shall be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) If the license plates issued pursuant to this section are lost, stolen, or mutilated, the recipient of the plates shall be issued replacement license plates upon request and without charge.

Source: Laws 2005, LB 274, § 122; Laws 2007, LB286, § 40.
Effective date September 1, 2007.

60-3,122.01 Gold Star Family plates; design requirements. (1) The department shall design license plates to be known as Gold Star Family plates. The department shall create designs reflecting support for those who died while serving in good standing in the United States Armed Forces in consultation with the Department of Veterans' Affairs and the Military Department. The Department of Veterans' Affairs shall recommend the design of the plate to the Department of Motor Vehicles. The design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department shall make applications available for this type of plate when it is designed. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,122.02.

(2) One type of Gold Star Family plate shall be consecutively numbered plates. The department shall:

(a) Number the plates consecutively beginning with the number one, using numerals the size of which maximizes legibility and limiting the numerals to five characters or less; and

(b) Not use a county designation or any characters other than numbers on the plates.

(3) One type of Gold Star Family plate shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.

Source: Laws 2007, LB570, § 2.
Operative date January 1, 2010.

60-3,122.02 Gold Star Family plates; fee. (1) A person may apply to the department for Gold Star Family plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle or cabin trailer, except for a commercial truck. An applicant receiving a Gold Star Family plate for a farm truck with a gross weight of over sixteen tons shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications through the county treasurers or designated county officials. The license plates shall be issued upon payment of the license fee described

in subsection (2) of this section and furnishing proof satisfactory to the department that the applicant is a surviving spouse, whether remarried or not, or an ancestor, including a stepparent, a descendant, including a stepchild, a foster parent or a person in loco parentis, or a sibling of a person who died while in good standing on active duty in the military service of the United States. Only one motor vehicle or trailer owned by the applicant shall be so licensed at any one time.

(2)(a) Each application for initial issuance of consecutively numbered Gold Star Family plates shall be accompanied by a fee of fifteen dollars. An application for renewal of such plates shall be accompanied by a fee of fifteen dollars. County treasurers or designated county officials collecting fees for renewals pursuant to this subdivision shall remit them to the State Treasurer. The State Treasurer shall credit five dollars of the fee for initial issuance and renewal of such plates to the Department of Motor Vehicles Cash Fund and ten dollars of the fee to the Nebraska Veteran Cemetery System Operation Fund.

(b) Each application for initial issuance of personalized message Gold Star Family plates shall be accompanied by a fee of forty dollars. An application for renewal of such plates shall be accompanied by a fee of forty dollars. County treasurers or designated county officials collecting fees for renewals pursuant to this subdivision shall remit them to the State Treasurer. The State Treasurer shall credit thirty dollars of the fee for initial issuance and renewal of such plates to the Department of Motor Vehicles Cash Fund and ten dollars of the fee to the Nebraska Veteran Cemetery System Operation Fund.

(3) When the department receives an application for Gold Star Family plates, the department shall deliver the plates to the county treasurer or designated county official of the county in which the motor vehicle or cabin trailer is registered. The county treasurer or designated county official shall issue Gold Star Family plates in lieu of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the motor vehicle or cabin trailer. If Gold Star Family plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request and without charge.

(4) The owner of a motor vehicle or cabin trailer bearing Gold Star Family plates may apply to the county treasurer or designated county official to have such plates transferred to a motor vehicle other than the vehicle for which such plates were originally purchased if such vehicle is owned by the owner of the plates. The owner may have the unused portion of the fee for the plates credited to the other vehicle which will bear the plates at the rate of eight and one-third percent per month for each full month left in the registration period. Application for such transfer shall be accompanied by a fee of three dollars. Fees collected pursuant to this subsection shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(5) If the cost of manufacturing Gold Star Family plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the Nebraska Veteran Cemetery System Operation Fund shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs

of Gold Star Family plates and the amount charged pursuant to section 60-3,102 with respect to such plates and the remainder shall be credited to the Nebraska Veteran Cemetery System Operation Fund.

Source: Laws 2007, LB570, § 3.
Operative date January 1, 2010.

60-3,123 Prisoner of war plates; fee. (1) Any person who was captured and incarcerated by an enemy of the United States during a period of conflict with such enemy and who was discharged or otherwise separated with a characterization of honorable from or is currently serving in the United States Armed Forces may, in addition to the application required in section 60-385, apply to the department for license plates designed to indicate that he or she is a former prisoner of war.

(2) The license plates shall be issued upon the applicant paying the regular license fee and an additional fee of five dollars and furnishing proof satisfactory to the department that the applicant was formerly a prisoner of war. The additional fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund. Only one motor vehicle, trailer, semitrailer, or cabin trailer owned by an applicant shall be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) If the license plates issued under this section are lost, stolen, or mutilated, the recipient of the license plates shall be issued replacement license plates upon request and without charge.

Source: Laws 2005, LB 274, § 123; Laws 2007, LB286, § 41.
Effective date September 1, 2007.

60-3,124 Disabled veteran plates; fee. (1) Any person who is a veteran of the United States Armed Forces, who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), and who is classified by the United States Department of Veterans Affairs as one hundred percent service-connected disabled may, in addition to the application required in section 60-385, apply to the Department of Motor Vehicles for license plates designed by the department to indicate that the applicant is a disabled veteran. The inscription on the license plates shall be D.A.V. immediately below the license plate number to indicate that the holder of the license plates is a disabled veteran.

(2) The plates shall be issued upon the applicant paying the regular license fee and an additional fee of five dollars and furnishing proof satisfactory to the department that the applicant is a disabled veteran. The additional fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund. Only one motor vehicle, trailer, semitrailer, or cabin trailer owned by the applicant shall be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) If the license plates issued under this section are lost, stolen, or mutilated, the recipient of the plates shall be issued replacement license plates as provided in section 60-3,157.

Source: Laws 2005, LB 274, § 124; Laws 2007, LB286, § 42.
Effective date September 1, 2007.

60-3,125 Purple Heart plates; fee. (1) Any person may, in addition to the application required by section 60-385, apply to the department for license plates designed by the department to indicate that the applicant has received from the federal government an award of a Purple Heart. The inscription of the plates shall be designed so as to include a facsimile of the award and beneath any numerical designation upon the plates pursuant to section 60-370 the words Purple Heart separately on one line and the words Combat Wounded on the line below.

(2) The license plates shall be issued upon payment of the regular license fee and an additional fee of five dollars and furnishing proof satisfactory to the department that the applicant was awarded the Purple Heart. The additional fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund. Any number of motor vehicles, trailers, semitrailers, or cabin trailers owned by the applicant may be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) If license plates issued pursuant to this section are lost, stolen, or mutilated, the recipient of the plates shall be issued replacement license plates upon request and without charge.

Source: Laws 2005, LB 274, § 125; Laws 2007, LB286, § 43.
Effective date September 1, 2007.

60-3,126 Amateur radio station license plates; fee; renewal. (1) Any person who holds an unrevoked and unexpired amateur radio station license issued by the Federal Communications Commission and is the owner of a motor vehicle, trailer, semitrailer, or cabin trailer, except for motor vehicles and trailers registered under section 60-3,198, may, in addition to the application required by section 60-385, apply to the department for license plates upon which shall be inscribed the official amateur radio call letters of such applicant.

(2) Such license plates shall be issued, in lieu of the usual numbers and letters, to such an applicant upon payment of the regular license fee and the payment of an additional fee of five dollars and furnishing proof that the applicant holds such an unrevoked and unexpired amateur radio station license. The additional fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund. Only one such motor vehicle or trailer owned by an applicant shall be so registered at any one time.

(3) An applicant applying for renewal of amateur radio station license plates shall again furnish proof that he or she holds an unrevoked and unexpired amateur radio station license issued by the Federal Communications Commission.

(4) The department shall prescribe the size and design of the license plates and furnish such plates to the persons applying for and entitled to the same upon the payment of the required fee.

Source: Laws 2005, LB 274, § 126; Laws 2007, LB286, § 44.
Effective date September 1, 2007.

60-3,128 Nebraska Cornhusker Spirit Plates; application; fee; transfer; credit allowed. (1) A person may apply to the department for Nebraska Cornhusker Spirit Plates

in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, semitrailer, or cabin trailer, except for motor vehicles or trailers registered under section 60-3,198. An applicant receiving a spirit plate for a farm truck with a gross weight of over sixteen tons or for a commercial motor vehicle registered for a gross weight of five tons or over shall affix the appropriate tonnage decal to the spirit plate. The department shall make forms available for such applications through the county treasurers or designated county officials. Each application for initial issuance or renewal of spirit plates shall be accompanied by a fee of seventy dollars. Fees collected pursuant to this subsection shall be remitted to the State Treasurer. The State Treasurer shall credit forty-three percent of the fees for initial issuance and renewal of spirit plates to the Department of Motor Vehicles Cash Fund and fifty-seven percent of the fees to the Spirit Plate Proceeds Fund.

(2) When the department receives an application for spirit plates, it shall deliver the plates to the county treasurer or designated county official of the county in which the motor vehicle or cabin trailer is registered. The county treasurer or designated county official shall issue spirit plates in lieu of regular license plates when the applicant complies with the other provisions of law for registration of the motor vehicle or cabin trailer. If spirit plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates pursuant to section 60-3,157.

(3)(a) The owner of a motor vehicle or cabin trailer bearing spirit plates may make application to the county treasurer or designated county official to have such spirit plates transferred to a motor vehicle or cabin trailer other than the motor vehicle or cabin trailer for which such plates were originally purchased if such motor vehicle or cabin trailer is owned by the owner of the spirit plates.

(b) The owner may have the unused portion of the spirit plate fee credited to the other motor vehicle or cabin trailer which will bear the spirit plate at the rate of eight and one-third percent per month for each full month left in the registration period.

(c) Application for such transfer shall be accompanied by a fee of three dollars. Fees collected pursuant to this subsection shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 2005, LB 274, § 128; Laws 2007, LB286, § 45.
Effective date September 1, 2007.

60-3,130.04 Historical vehicle; model-year license plates; authorized. (1) An owner of a historical vehicle eligible for registration under section 60-3,130 may use a license plate or plates designed by this state in the year corresponding to the model year when the vehicle was manufactured in lieu of the plates designed pursuant to section 60-3,130.03 subject to the approval of the department. The department shall inspect the plate or plates and may approve the plate or plates if it is determined that the model-year license plate or plates are legible and serviceable and that the license plate numbers do not conflict with or duplicate other numbers assigned and in use. An original-issued license plate or plates that have been restored to original condition may be used when approved by the department.

(2) The department may consult with a recognized car club in determining whether the year of the license plate or plates to be used corresponds to the model year when the vehicle was manufactured.

(3) If only one license plate is used on the vehicle, the license plate shall be placed on the rear of the vehicle. The owner of a historical vehicle may use only one plate on the vehicle even for years in which two license plates were issued for vehicles in general.

(4) License plates used pursuant to this section corresponding to the year of manufacture of the vehicle shall not be personalized message license plates, Pearl Harbor license plates, prisoner-of-war license plates, disabled veteran license plates, Purple Heart license plates, amateur radio station license plates, Nebraska Cornhusker Spirit Plates, or handicapped or disabled person license plates.

Source: Laws 2006, LB 663, § 28; Laws 2007, LB286, § 46.
Effective date September 1, 2007.

60-3,135 Undercover license plates; issuance; confidential. (1)(a) Undercover license plates may be issued to state, county, city, or village law enforcement agencies and shall be used only for legitimate criminal investigatory purposes. Undercover license plates may also be issued to the Nebraska State Patrol, the Game and Parks Commission, deputy state sheriffs employed by the Nebraska Brand Committee and State Fire Marshal for state law enforcement purposes, persons employed by the Tax Commissioner for state revenue enforcement purposes, the Department of Health and Human Services for the purposes of communicable disease control, the prevention and control of those communicable diseases which endanger the public health, the enforcement of drug control laws, or other investigation purposes, the Department of Agriculture for special investigative purposes, and the Insurance Fraud Prevention Division of the Department of Insurance for investigative purposes. Undercover license plates shall not be used on personally owned vehicles or for personal use of government-owned vehicles.

(b) The director shall prescribe a form for agencies to apply for undercover license plates. The form shall include a space for the name and signature of the contact person for the requesting agency, a statement that the undercover license plates are to be used only for legitimate criminal investigatory purposes, and a statement that undercover license plates are not to be used on personally owned vehicles or for personal use of government-owned vehicles.

(2) The agency shall include the name and signature of the contact person for the agency on the form and pay the fee prescribed in section 60-3,102. If the undercover license plates will be used for the investigation of a specific event rather than for ongoing investigations, the agency shall designate on the form an estimate of the length of time the undercover license plates will be needed. The contact person in the agency shall sign the form and verify the information contained in the form.

(3) Upon receipt of a completed form, the director shall determine whether the undercover license plates will be used by an approved agency for a legitimate purpose pursuant to subsection (1) of this section. If the director determines that the undercover license plates will

be used for such a purpose, he or she may issue the undercover license plates in the form and under the conditions he or she determines to be necessary. The decision of the director regarding issuance of undercover license plates is final.

(4) The department shall keep records pertaining to undercover license plates confidential, and such records shall not be subject to public disclosure.

(5) The contact person shall return the undercover license plates to the department if:

(a) The undercover license plates expire and are not renewed;

(b) The purpose for which the undercover license plates were issued has been completed or terminated; or

(c) The director requests their return.

(6) A state agency, board, or commission that uses motor vehicles from the transportation services bureau of the Department of Administrative Services shall notify the bureau immediately after undercover license plates have been assigned to the motor vehicle and shall provide the equipment and license plate number and the undercover license plate number to the bureau. The transportation services bureau shall maintain a list of state-owned motor vehicles which have been assigned undercover license plates. The list shall be confidential and not be subject to public disclosure.

(7) The contact person shall be held accountable to keep proper records of the number of undercover plates possessed by the agency, the particular license plate numbers for each motor vehicle, and the person who is assigned to the motor vehicle. This record shall be confidential and not be subject to public disclosure.

Source: Laws 2005, LB 274, § 135; Laws 2007, LB296, § 227.
Operative date July 1, 2007.

60-3,137 Motor vehicle insurance data base; information required. Each insurance company doing business in this state shall provide information shown on each automobile liability policy issued in this state as required by the department pursuant to sections 60-3,136 to 60-3,139 for inclusion in the motor vehicle insurance data base in a form and manner acceptable to the department. Any person who qualifies as a self-insurer under sections 60-562 to 60-564 or any person who provides financial responsibility under sections 75-348 to 75-358 or 75-392 to 75-399 shall not be required to provide information to the department for inclusion in the motor vehicle insurance data base.

Source: Laws 2005, LB 274, § 137; Laws 2007, LB358, § 9.
Effective date September 1, 2007.

60-3,141 Agents of department; fees; collection. (1) The various county treasurers or designated county officials shall act as agents for the department in the collection of all motor vehicle taxes, motor vehicle fees, and registration fees.

(2) While acting as agents pursuant to subsection (1) of this section, the county treasurers or designated county officials shall in addition to the taxes and registration fees collect and retain for the county two dollars for each registration of a motor vehicle or trailer of a resident

of the State of Nebraska and five dollars for each registration of a motor vehicle or trailer of a nonresident from the funds collected for the registration issued. Such fees collected by the county shall be remitted to the county treasurer for credit to the county general fund.

(3) The county treasurers or designated county officials shall transmit all motor vehicle fees and registration fees collected to the State Treasurer on or before the twenty-fifth day of each month and at such other times as the State Treasurer requires for credit to the Motor Vehicle Fee Fund and the Highway Trust Fund, respectively, except as provided in section 60-3,156. Any county treasurer or designated county official who fails to transfer to the State Treasurer the amount due the state at the times required in this section shall pay interest at the rate specified in section 45-104.02, as such rate may be adjusted from time to time, from the time the motor vehicle fees and registration fees become due until paid.

Source: Laws 2005, LB 274, § 141; Laws 2007, LB286, § 47.
Effective date September 1, 2007.

60-3,142 Fees; retention by county. The various county treasurers or designated county officials acting as agents for the department in collection of the fees shall retain five percent of each fee collected under section 60-3,112. The five percent shall be remitted to the county treasurer for credit to the county general fund.

Source: Laws 2005, LB 274, § 142; Laws 2007, LB286, § 48.
Effective date September 1, 2007.

60-3,145 Local trucks; registration fees. (1) The registration fee on local trucks shall be based on the gross vehicle weight as provided in section 60-3,147, and local trucks shall be registered at a fee of thirty percent of the commercial motor vehicle registration fee, except that (a) no local truck shall be registered for a fee of less than eighteen dollars, (b) the registration fee for each truck with a factory-rated capacity of one ton or less shall be eighteen dollars, and (c) commercial pickup trucks with a gross load of over three tons shall be registered for the fee provided for commercial motor vehicles.

(2) Local truck license plates shall display, in addition to the registration number, the designation of local motor vehicles.

Source: Laws 2005, LB 274, § 145; Laws 2007, LB286, § 49.
Effective date September 1, 2007.

60-3,147 Commercial motor vehicles; registration fees. (1) The registration fee on commercial motor vehicles, except those motor vehicles registered under section 60-3,198, shall be based upon the gross vehicle weight, not to exceed the maximum authorized by section 60-6,294.

(2) The registration fee on commercial motor vehicles, except for motor vehicles and trailers registered under section 60-3,198, shall be based on the gross vehicle weight on such commercial motor vehicles plus the gross vehicle weight of any trailer or combination with which it is operated, except that for the purpose of determining the registration fee, the gross vehicle weight of a commercial motor vehicle towing or hauling a disabled or wrecked motor

vehicle properly registered for use on the highways shall be only the gross vehicle weight of the towing commercial motor vehicle fully equipped and not including the weight of the motor vehicle being towed or hauled.

(3) Except as provided in subsection (4) of this section, the registration fee on such commercial motor vehicles shall be at the following rates:

(a) For a gross vehicle weight of three tons or less, eighteen dollars;

(b) For a gross vehicle weight exceeding three tons and not exceeding four tons, twenty-five dollars;

(c) For a gross vehicle weight exceeding four tons and not exceeding five tons, thirty-five dollars;

(d) For a gross vehicle weight exceeding five tons and not exceeding six tons, sixty dollars;

(e) For a gross vehicle weight exceeding six tons but not exceeding seven tons, eighty-five dollars;

(f) For a gross vehicle weight in excess of seven tons, the fee shall be that for a commercial motor vehicle having a gross vehicle weight of seven tons and, in addition thereto, twenty-five dollars for each ton of gross vehicle weight over seven tons.

(4)(a) For fractional tons in excess of the twenty percent or the tolerance of one thousand pounds, as provided in section 60-6,300, the fee shall be computed on the basis of the next higher bracket.

(b) The fees provided by this section shall be reduced ten percent for motor vehicles used exclusively for the transportation of agricultural products.

(c) Fees for commercial motor vehicles with a gross vehicle weight in excess of thirty-six tons shall be increased by twenty percent for all such commercial motor vehicles operated on any highway not a part of the National System of Interstate and Defense Highways.

(5)(a) Such fee may be paid one-half at the time of registration and one-half on the first day of the seventh month of the registration period when the license fee exceeds two hundred ten dollars. When the second half is paid, the county treasurer or designated county official shall furnish a registration certificate and license plates issued by the department which shall be displayed on such commercial motor vehicle in the manner provided by law. In addition to the registration fee, the department shall collect a sufficient fee to cover the cost of issuing the certificate and license plates.

(b) If such second half is not paid within thirty days following the first day of the seventh month, the registration of such commercial motor vehicle shall be canceled and the registration certificate and license plates shall be returned to the county treasurer or designated county official.

(c) Such fee shall be paid prior to any subsequent registration or renewal of registration.

(6) License plates issued under this section shall be the same size and of the same basic design as regular license plates issued under section 60-3,100.

(7) A license plate or plates issued to a commercial motor vehicle with a gross weight of five tons or over shall display, in addition to the registration number, the weight that

the commercial motor vehicle is licensed for, using a decal on the license plate or plates of the commercial motor vehicle in letters and numerals of such size and design as shall be determined and issued by the department.

Source: Laws 2005, LB 274, § 147; Laws 2007, LB286, § 50.
Effective date September 1, 2007.

60-3,150 Truck-tractor and semitrailer; commercial trailer; registration fee. For registration purposes, a truck-tractor and semitrailer unit and a commercial trailer shall be considered as separate units. The registration fee of the truck-tractor shall be the fee provided for commercial motor vehicles. Each semitrailer and each commercial trailer shall be registered upon the payment of a fee of one dollar. The department shall provide an appropriate license plate or, when appropriate, validation decal to identify such semitrailers. If any truck or truck-tractor, operated under the classification designated as local, farm, or A or with plates issued under section 60-3,113 is operated outside of the limits of its respective classification, it shall thereupon come under the classification of commercial motor vehicle.

Source: Laws 2005, LB 274, § 150; Laws 2007, LB286, § 51.
Effective date September 1, 2007.

60-3,184 Motor vehicle tax and fee; terms, defined. For purposes of sections 60-3,184 to 60-3,190:

(1) Automobile means passenger cars, trucks, utility vehicles, and vans up to and including seven tons;

(2) Motor vehicle means every motor vehicle and trailer subject to the payment of registration fees or permit fees under the laws of this state and every cabin trailer registered for operation upon the highways of this state;

(3) Motor vehicle fee means the fee imposed upon motor vehicles under section 60-3,190;

(4) Motor vehicle tax means the tax imposed upon motor vehicles under section 60-3,185; and

(5) Registration period means the period from the date of registration pursuant to section 60-392 to the first day of the month following one year after such date.

Source: Laws 2005, LB 274, § 184; Laws 2007, LB286, § 52.
Effective date September 1, 2007.

60-3,186 Motor vehicle tax; notice; taxes and fees; payment; proceeds; disposition. (1) The county treasurer or designated county official shall annually determine the motor vehicle tax on each motor vehicle registered in the county based on the age of the motor vehicle pursuant to section 60-3,187 and cause a notice of the amount of the tax to be mailed to the registrant at the address shown upon his or her registration certificate. The notice shall be printed on a form prescribed by the department and shall be mailed on or before the first day of the last month of the registration period.

(2)(a) The motor vehicle tax, motor vehicle fee, registration fee, sales tax, and any other applicable taxes and fees shall be paid to the county treasurer or designated county official

prior to the registration of the motor vehicle for the following registration period. If the motor vehicle being registered has been transferred as a gift or for a nominal amount, any sales tax owed by the transferor on the purchase of the motor vehicle shall have been paid or be paid to the county treasurer or designated county official prior to the registration of the motor vehicle for the following registration period.

(b) After retaining one percent of the motor vehicle tax proceeds collected for costs, the remaining motor vehicle tax proceeds shall be allocated to each county, local school system, school district, city, and village in the tax district in which the motor vehicle has situs.

(c)(i) Twenty-two percent of the remaining motor vehicle tax proceeds shall be allocated to the county, (ii) sixty percent shall be allocated to the local school system or school district, and (iii) eighteen percent shall be allocated to the city or village, except that (A) if the tax district is not in a city or village, forty percent shall be allocated to the county, and (B) in counties containing a city of the metropolitan class, eighteen percent shall be allocated to the county and twenty-two percent shall be allocated to the city or village.

(d) The amount allocated to a local school system shall be distributed to school districts in the same manner as property taxes.

(3) Proceeds from the motor vehicle tax shall be treated as property tax revenue for purposes of expenditure limitations, matching of state or federal funds, and other purposes.

Source: Laws 2005, LB 274, § 186; Laws 2006, LB 248, § 1; Laws 2007, LB286, § 53.
Effective date September 1, 2007.

60-3,188 Motor vehicle tax; valuation of vehicles; department; duties. (1) The department shall determine motor vehicle manufacturers' suggested retail prices, gross vehicle weight ratings, and vehicle identification numbers using appropriate commercially available electronic information on a system designated by the department.

(2) For purposes of section 60-3,187, the department shall determine the value when new of automobiles and determine the gross vehicle weight ratings of motor vehicles over seven tons. The department shall make a determination for such makes and models of automobiles and motor vehicles already manufactured or being manufactured and shall, as new makes and models of such automobiles and motor vehicles become available to Nebraska residents, continue to make such determinations. The value when new is the manufacturer's suggested retail price for such new automobile or motor vehicle of that year using the manufacturer's body type and model with standard equipment and not including transportation or delivery cost.

(3) Any person or taxing official may, within ten days after a determination has been certified by the department, file objections in writing with the department stating why the determination is incorrect.

(4) Any affected person may file an objection to the determination of the department not more than fifteen days before and not later than thirty days after the registration date. The

objection must be filed in writing with the department and state why the determination is incorrect.

(5) Upon the filing of objections the department shall fix a time for a hearing. Any party may introduce evidence in reference to the objections, and the department shall act upon the objections and make a written order, mailed to the objector within seven days after the order. The final decision by the department may be appealed. The appeal shall be to the Tax Equalization and Review Commission in accordance with the Tax Equalization and Review Commission Act within thirty days after the written order. In an appeal, the department's determination of the manufacturer's suggested retail price shall be presumed to be correct and the party challenging the determination shall bear the burden of proving it incorrect.

Source: Laws 2005, LB 274, § 188; Laws 2007, LB286, § 54.
Effective date September 1, 2007.

Cross Reference

Tax Equalization and Review Commission Act, see section 77-5001.

60-3,189 Tax exemption; procedure; appeal. (1) A veteran of the United States Armed Forces who qualifies for an exemption from the motor vehicle tax under subdivision (2) of section 60-3,185 shall apply for the exemption to the county treasurer or designated county official not more than fifteen days before and not later than thirty days after the registration date for the motor vehicle. A renewal application shall be made annually not sooner than the first day of the last month of the registration period or later than the last day of the registration period. The county treasurer or designated county official shall approve or deny the application and notify the applicant of his or her decision within twenty days after the filing of the application. An applicant may appeal the denial of an application to the county board of equalization within twenty days after the date the notice was mailed.

(2) An organization which qualifies for an exemption from the motor vehicle tax under subdivision (6) of section 60-3,185 shall apply for the exemption to the county treasurer or designated county official not more than fifteen days before and not later than thirty days after the registration date for the motor vehicle. For a newly acquired motor vehicle, an application for exemption must be made within thirty days after the purchase date. A renewal application shall be made annually not sooner than the first day of the last month of the registration period or later than the last day of the registration period. The county treasurer or designated county official shall examine the application and recommend either exempt or nonexempt status to the county board of equalization within twenty days after receipt of the application. The county board of equalization, after a hearing on ten days' notice to the applicant and after considering the recommendation of the county treasurer or designated county official and any other information it may obtain, shall approve or deny the exemption on the basis of law and of rules and regulations adopted and promulgated by the Tax Commissioner within thirty days after the hearing. The county board of equalization shall mail or deliver its final decision to the applicant and the county treasurer or designated county official within seven days after the date of decision. The decision of the county board of equalization may be appealed to

the Tax Equalization and Review Commission in accordance with the Tax Equalization and Review Commission Act within thirty days after the final decision.

Source: Laws 2005, LB 274, § 189; Laws 2007, LB334, § 10.
Operative date July 1, 2007.

Cross Reference

Tax Equalization and Review Commission Act, see section 77-5001.

60-3,190 Motor vehicle fee; fee schedules; Motor Vehicle Fee Fund; created; use; investment. (1) A motor vehicle fee is imposed on all motor vehicles registered for operation in this state. An owner of a motor vehicle which is exempt from the imposition of a motor vehicle tax pursuant to section 60-3,185 shall also be exempt from the imposition of the motor vehicle fee imposed pursuant to this section.

(2) The county treasurer or designated county official shall annually determine the motor vehicle fee on each motor vehicle registered in the county based on the age of the motor vehicle pursuant to this section and cause a notice of the amount of the fee to be mailed to the registrant at the address shown upon his or her registration certificate. The notice shall be printed on a form prescribed by the department, shall be combined with the notice of the motor vehicle tax, and shall be mailed on or before the first day of the last month of the registration period.

(3) The motor vehicle fee schedules are set out in this subsection and subsection (4) of this section. Except for automobiles with a value when new of less than \$20,000, and for assembled automobiles, the fee shall be calculated by multiplying the base fee times the fraction which corresponds to the age category of the automobile as shown in the following table:

YEAR	FRACTION
First through fifth	1.00
Sixth through tenth	.70
Eleventh and over	.35

(4) The base fee shall be:

- (a) Automobiles, with a value when new of less than \$20,000, and assembled automobiles — \$5
- (b) Automobiles, with a value when new of \$20,000 through \$39,999 — \$20
- (c) Automobiles, with a value when new of \$40,000 or more — \$30
- (d) Motorcycles — \$10
- (e) Recreational vehicles and cabin trailers — \$10
- (f) Trucks over seven tons and buses — \$30
- (g) Trailers other than semitrailers — \$10
- (h) Semitrailers — \$30.

(5) The motor vehicle tax, motor vehicle fee, and registration fee shall be paid to the county treasurer or designated official prior to the registration of the motor vehicle for the following registration period. After retaining one percent of the motor vehicle fee collected for costs, the remaining proceeds shall be remitted to the State Treasurer for credit to the Motor Vehicle Fee Fund. The State Treasurer shall return funds from the Motor Vehicle Fee Fund remitted by a county treasurer or designated county official which are needed for refunds or credits authorized by law.

(6)(a) The Motor Vehicle Fee Fund is created. On or before the last day of each calendar quarter, the State Treasurer shall distribute all funds in the Motor Vehicle Fee Fund as follows: (i) Fifty percent to the county treasurer of each county, amounts in the same proportion as the most recent allocation received by each county from the Highway Allocation Fund; and (ii) fifty percent to the treasurer of each municipality, amounts in the same proportion as the most recent allocation received by each municipality from the Highway Allocation Fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(b) Funds from the Motor Vehicle Fee Fund shall be considered local revenue available for matching state sources.

(c) All receipts by counties and municipalities from the Motor Vehicle Fee Fund shall be used for road, bridge, and street purposes.

(7) For purposes of subdivisions (4)(a), (b), (c), and (f) of this section, automobiles or trucks includes all trucks and combinations of trucks or truck-tractors, except those trucks, trailers, or semitrailers registered under section 60-3,198, and the fee is based on the gross vehicle weight rating as reported by the manufacturer.

(8) Current model year vehicles are designated as first-year motor vehicles for purposes of the schedules.

(9) When a motor vehicle is registered which is newer than the current model year by the manufacturer's designation, the motor vehicle is subject to the initial motor vehicle fee for six registration periods.

(10) Assembled vehicles other than assembled automobiles shall follow the schedules for the motor vehicle body type.

Source: Laws 2005, LB 274, § 190; Laws 2007, LB286, § 55.
Effective date September 1, 2007.

Cross Reference

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

60-3,191 Repealed. Laws 2007, LB 286, § 57.

60-3,196 Apportionable vehicles; International Registration Plan; effect. Apportionable vehicles registered as provided in section 60-3,198 and apportionable vehicles covered under section 404 of Article IV, International Registration Plan, adopted

by the American Association of Motor Vehicle Administrators, as such section existed on October 1, 2006, which is hereby adopted and incorporated by reference, shall be deemed fully registered in all jurisdictions where apportioned or granted reciprocity for any type of movement or operation. The registrant must have proper interjurisdiction or intrajurisdiction authority from the appropriate regulatory agency of each jurisdiction of this state if not exempt from regulation by the regulatory agency.

Source: Laws 2005, LB 274, § 196; Laws 2006, LB 853, § 4; Laws 2007, LB239, § 3.
Effective date September 1, 2007.

60-3,202 Registration fees; collection and distribution; procedure; Motor Vehicle Tax Fund; created; use; investment. (1) As registration fees are received by the Division of Motor Carrier Services of the department pursuant to section 60-3,198, the division shall remit the fees to the State Treasurer, less a collection fee of three percent of thirty percent of the registration fees collected. The collection fee shall be credited to the Department of Revenue Property Assessment Division Cash Fund. The State Treasurer shall credit the remainder of the thirty percent of the fees collected to the Motor Vehicle Tax Fund and the remaining seventy percent of the fees collected to the Highway Trust Fund.

(2) On or before the last day of each quarter of the calendar year, the State Treasurer shall distribute all funds in the Motor Vehicle Tax Fund to the county treasurer or designated county official of each county in the same proportion as the number of original apportionable vehicle registrations in each county bears to the total of all original registrations within the state in the registration year immediately preceding.

(3) Upon receipt of motor vehicle tax funds from the State Treasurer, the county treasurer or designated county official shall distribute such funds to taxing agencies within the county in the same proportion that the levy of each such taxing agency bears to the total of such levies of all taxing agencies in the county.

(4) In the event any taxing district has been annexed, merged, dissolved, or in any way absorbed into another taxing district, any apportionment of motor vehicle tax funds to which such taxing district would have been entitled shall be apportioned to the successor taxing district which has assumed the functions of the annexed, merged, dissolved, or absorbed taxing district.

(5) On or before March 1 of each year, the department shall furnish to the State Treasurer a tabulation showing the total number of original apportionable vehicle registrations in each county for the immediately preceding calendar year, which shall be the basis for computing the distribution of motor vehicle tax funds as provided in subsection (2) of this section.

(6) The Motor Vehicle Tax Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2005, LB 274, § 202; Laws 2007, LB334, § 11.
Operative date July 1, 2007.

Cross Reference

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

60-3,205 Registration certificate; disciplinary actions; director; powers; procedure. (1)(a) The director may suspend, revoke, cancel, or refuse to issue or renew a registration certificate under the International Registration Plan Act:

(i) If the applicant or certificate holder has had his or her license issued under the International Fuel Tax Agreement Act revoked or the director refused to issue or refused to renew such license; or

(ii) If the applicant or certificate holder is in violation of sections 75-348 to 75-358 or 75-392 to 75-399.

(b) Prior to taking action under this section, the director shall notify and advise the applicant or certificate holder of the proposed action and the reasons for such action in writing, by registered or certified mail, to his or her last-known business address as shown on the application for the certificate or renewal. The notice shall also include an advisement of the procedures in subdivision (c) of this subsection.

(c) The applicant or certificate holder may, within thirty days after the date of the mailing of the notice, petition the director for a hearing to contest the proposed action. The hearing shall be commenced in accordance with the rules and regulations adopted and promulgated by the department. If a petition is filed, the director shall, within twenty days after receipt of the petition, set a hearing date at which the applicant or certificate holder may show cause why the proposed action should not be taken. The director shall give the applicant or certificate holder reasonable notice of the time and place of the hearing. If the director's decision is adverse to the applicant or certificate holder, the applicant or certificate holder may appeal the decision in accordance with the Administrative Procedure Act.

(d) Except as provided in subsections (2) and (3) of this section, the filing of the petition shall stay any action by the director until a hearing is held and a final decision and order is issued.

(e) Except as provided in subsections (2) and (3) of this section, if no petition is filed at the expiration of thirty days after the date on which the notification was mailed, the director may take the proposed action described in the notice.

(f) If, in the judgment of the director, the applicant or certificate holder has complied with or is no longer in violation of the provisions for which the director took action under this subsection, the director may reinstate the registration certificate without delay.

(2)(a) The director may suspend, revoke, cancel, or refuse to issue or renew a registration certificate under the International Registration Plan Act or a license under the International Fuel Tax Agreement Act if the applicant, licensee, or certificate holder has issued to the department a check or draft which has been returned because of insufficient funds, no funds, or a stop-payment order. The director may take such action no sooner than seven days after the written notice required in subdivision (1)(b) of this section has been provided. Any petition

to contest such action filed pursuant to subdivision (1)(c) of this section shall not stay such action of the director.

(b) If the director takes an action pursuant to this subsection, the director shall reinstate the registration certificate or license without delay upon the payment of certified funds by the applicant, licensee, or certificate holder for any fees due and reasonable administrative costs, not to exceed twenty-five dollars, incurred in taking such action.

(c) The rules, regulations, and orders of the director and the department that pertain to hearings commenced in accordance with this section and that are in effect prior to March 17, 2006, shall remain in effect, unless changed or eliminated by the director or the department, except for those portions involving a stay upon the filing of a petition to contest any action taken pursuant to this subsection, in which case this subsection shall supersede those provisions.

(3) Any person who receives notice from the director of action taken pursuant to subsection (1) or (2) of this section shall, within three business days, return such registration certificate and license plates to the department as provided in this section. If any person fails to return the registration certificate and license plates to the department, the department shall notify the Nebraska State Patrol that any such person is in violation of this section.

Source: Laws 2005, LB 274, § 205; Laws 2006, LB 853, § 5; Laws 2007, LB358, § 10.
Effective date September 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

International Fuel Tax Agreement Act, see section 66-1401.

60-3,221 Towing of trailers; restrictions; section; how construed. (1) Except as otherwise provided in the Motor Vehicle Registration Act:

(a) A cabin trailer shall only be towed by a properly registered:

- (i) Passenger car;
- (ii) Commercial motor vehicle or apportionable vehicle;
- (iii) Farm truck;
- (iv) Local truck;
- (v) Recreational vehicle; or
- (vi) Bus;

(b) A utility trailer shall only be towed by:

- (i) A properly registered passenger car;
- (ii) A properly registered commercial motor vehicle or apportionable vehicle;
- (iii) A properly registered farm truck;
- (iv) A properly registered local truck;
- (v) A properly registered recreational vehicle;

(vi) A properly registered motor vehicle which is engaged in soil and water conservation pursuant to section 60-3,149;

- (vii) A properly registered well-boring apparatus;

- (viii) A dealer-plated vehicle;
- (ix) A personal-use dealer-plated vehicle; or
- (x) A properly registered bus;
- (c) A farm trailer shall only be towed by a properly registered:
 - (i) Passenger car;
 - (ii) Commercial motor vehicle; or
 - (iii) Farm truck;
- (d) A commercial trailer shall only be towed by:
 - (i) A properly registered motor vehicle which is engaged in soil and water conservation pursuant to section 60-3,149;
 - (ii) A properly registered local truck;
 - (iii) A properly registered well-boring apparatus;
 - (iv) A properly registered commercial motor vehicle or apportionable vehicle;
 - (v) A dealer-plated vehicle;
 - (vi) A personal-use dealer-plated vehicle;
 - (vii) A properly registered bus; or
 - (viii) A properly registered farm truck;
- (e) A fertilizer trailer shall only be towed by a properly registered:
 - (i) Passenger car;
 - (ii) Commercial motor vehicle or apportionable vehicle;
 - (iii) Farm truck; or
 - (iv) Local truck;
- (f) A pole and cable reel trailer shall only be towed by a properly registered:
 - (i) Commercial motor vehicle or apportionable vehicle; or
 - (ii) Local truck;
- (g) A dealer-plated trailer shall only be towed by:
 - (i) A dealer-plated vehicle;
 - (ii) A properly registered passenger car;
 - (iii) A properly registered commercial motor vehicle or apportionable vehicle;
 - (iv) A properly registered farm truck; or
 - (v) A personal-use dealer-plated vehicle; and
- (h) Trailers registered pursuant to section 60-3,198 as part of an apportioned fleet shall only be towed by:
 - (i) A properly registered motor vehicle which is engaged in soil and water conservation pursuant to section 60-3,149;
 - (ii) A properly registered local truck;
 - (iii) A properly registered well-boring apparatus;
 - (iv) A properly registered commercial motor vehicle or apportionable vehicle;
 - (v) A dealer-plated vehicle;
 - (vi) A personal-use dealer-plated vehicle;
 - (vii) A properly registered bus; or

(viii) A properly registered farm truck.

(2) Nothing in this section shall be construed to prohibit any motor vehicle or trailer from displaying dealer license plates or In Transit stickers authorized by section 60-376.

Source: Laws 2007, LB349, § 2.
Effective date September 1, 2007.

ARTICLE 4

MOTOR VEHICLE OPERATORS' LICENSES

(e) GENERAL PROVISIONS

Section.

- 60-462. Act, how cited.
- 60-462.01. Federal regulations; adopted.
- 60-463. Definitions, where found.
- 60-470.02. Interactive wireless communication device, defined.

(f) PROVISIONS APPLICABLE TO ALL OPERATORS' LICENSES

- 60-480.01. Undercover drivers' licenses; issuance; confidential; unlawful disclosure; penalty.
- 60-493. Organ and tissue donation; county treasurer or examiner; distribute brochure; additional information; department; duty.

(g) PROVISIONS APPLICABLE TO OPERATION OF MOTOR VEHICLES OTHER THAN COMMERCIAL

- 60-4,118.02. Health Advisory Board; created; members; terms; meetings.
- 60-4,120.01. Provisional operator's permit; application; issuance; operation restrictions.
- 60-4,123. LPD-learner's permit; application; issuance; operation restrictions.
- 60-4,124. School permit; LPE-learner's permit; issuance; operation restrictions; violations; penalty.

(h) PROVISIONS APPLICABLE TO OPERATION OF COMMERCIAL MOTOR VEHICLES

- 60-4,147.02. Hazardous materials endorsement; USA PATRIOT Act requirements.
- 60-4,164.01. Alcoholic liquor; blood test; withdrawing requirements; damages; liability.

(k) POINT SYSTEM

- 60-4,182. Point system; offenses enumerated.

(e) GENERAL PROVISIONS

60-462 Act, how cited. Sections 60-462 to 60-4,188 shall be known and may be cited as the Motor Vehicle Operator's License Act.

Source: Laws 1937, c. 141, § 31, p. 523; C.S.Supp.,1941, § 60-434; R.S.1943, (1988), § 60-402; Laws 1989, LB 284, § 2; Laws 1989, LB 285, § 12; Laws 1990, LB 980, § 6; Laws 1991, LB 44, § 1; Laws 1993, LB 105, § 4; Laws 1993, LB 370, § 65; Laws 1993, LB 420, § 1; Laws 1994, LB 211, § 1; Laws 1995, LB 467, § 6; Laws 1996, LB 323, § 1; Laws 1997, LB 210, § 2; Laws 1997, LB 256, § 4; Laws 1998, LB 320, § 1; Laws 2001, LB 38, § 5; Laws 2001, LB 574, § 1; Laws 2003, LB 209, § 1; Laws 2003, LB 562, § 2; Laws 2005, LB 76, § 2; Laws 2006, LB 853, § 6; Laws 2007, LB415, § 1. Operative date January 1, 2008.

60-462.01 Federal regulations; adopted. For purposes of the Motor Vehicle Operator's License Act, the following federal regulations are adopted as Nebraska law as they existed on January 1, 2007:

(1) Beginning on an implementation date designated by the director, the federal requirements for interstate shipment of etiologic agents, 42 C.F.R. part 72; and

(2) The parts, subparts, and sections of Title 49 of the Code of Federal Regulations, as referenced in the Motor Vehicle Operator's License Act.

Source: Laws 2003, LB 562, § 20; Laws 2004, LB 560, § 36; Laws 2005, LB 76, § 3; Laws 2006, LB 853, § 7; Laws 2006, LB 1007, § 4; Laws 2007, LB239, § 4. Effective date September 1, 2007.

60-463 Definitions, where found. For purposes of the Motor Vehicle Operator's License Act, the definitions found in sections 60-463.01 to 60-478 shall be used.

Source: Laws 1989, LB 285, § 13; Laws 1993, LB 370, § 66; Laws 1993, LB 420, § 2; Laws 2001, LB 38, § 6; Laws 2007, LB415, § 2. Operative date January 1, 2008.

60-470.02 Interactive wireless communication device, defined. Interactive wireless communication device means any wireless electronic communication device that provides for voice or data communication between two or more parties, including, but not limited to, a mobile or cellular telephone, a text messaging device, a personal digital assistant that sends or receives messages, an audio-video player that sends or receives messages, or a laptop computer.

Source: Laws 2007, LB415, § 3. Operative date January 1, 2008.

(f) PROVISIONS APPLICABLE TO ALL OPERATORS' LICENSES

60-480.01 Undercover drivers' licenses; issuance; confidential; unlawful disclosure; penalty. (1)(a) Undercover drivers' licenses may be issued to state, county, city, or village law enforcement agencies and shall be used only for legitimate criminal investigatory purposes. Undercover drivers' licenses may also be issued to the Nebraska State Patrol, the Game and Parks Commission, deputy state sheriffs employed by the Nebraska Brand Committee and State Fire Marshal for state law enforcement purposes, persons employed by the Tax Commissioner for state revenue enforcement purposes, the Department of Health and Human Services for the purposes of communicable disease control, the prevention and control of those communicable diseases which endanger the public health,

the enforcement of drug control laws, or other investigation purposes, and the Department of Agriculture for special investigative purposes. Undercover drivers' licenses are not for personal use.

(b) The director shall prescribe a form for agencies to apply for undercover drivers' licenses. The form shall include a space for the name and signature of the contact person for the requesting agency, a statement that the undercover drivers' licenses are to be used only for legitimate criminal investigatory purposes, and a statement that undercover drivers' licenses are not for personal use.

(2) The agency shall include the name and signature of the contact person for the agency on the form and pay the fees prescribed in section 60-4,115. If the undercover drivers' licenses will be used for the investigation of a specific event rather than for ongoing investigations, the agency shall designate on the form an estimate of the length of time the undercover drivers' licenses will be needed. The contact person in the agency shall sign the form and verify the information contained in the form.

(3) Upon receipt of a completed form, the director shall determine whether the undercover drivers' licenses will be used by an approved agency for a legitimate purpose pursuant to subsection (1) of this section. If the director determines that the undercover drivers' licenses will be used for such a purpose, he or she may issue the undercover drivers' licenses in the form and under the conditions he or she determines to be necessary. The decision of the director regarding issuance of undercover drivers' licenses is final.

(4) The Department of Motor Vehicles shall keep records pertaining to undercover drivers' licenses confidential, and such records shall not be subject to public disclosure. Any person who receives information pertaining to undercover drivers' licenses in the course of his or her employment and who discloses any such information to any unauthorized individual shall be guilty of a Class III misdemeanor.

(5) The contact person shall return the undercover drivers' licenses to the Department of Motor Vehicles if:

- (a) The undercover drivers' licenses expire and are not renewed;
- (b) The purpose for which the undercover drivers' licenses were issued has been completed or terminated;
- (c) The persons for whom the undercover drivers' licenses were issued cease to be employees of the agency; or
- (d) The director requests their return.

Source: Laws 1997, LB 256, § 6; Laws 2007, LB296, § 228.
Operative date July 1, 2007.

60-493 Organ and tissue donation; county treasurer or examiner; distribute brochure; additional information; department; duty. When a person applies for an operator's license or state identification card, the county treasurer or examiner of the Department of Motor Vehicles shall distribute a brochure provided by an organ and tissue

procurement organization and approved by the Department of Health and Human Services containing a description and explanation of the Uniform Anatomical Gift Act to each person applying for a new or renewal license or card.

If an individual desires to receive additional specific information regarding organ and tissue donation and the Donor Registry of Nebraska as indicated on an application or examiner's certificate under section 60-484, 60-4,144, or 60-4,181, the department shall notify a representative of the federally designated organ procurement organization in Nebraska within five working days of the name and address of such individual.

Source: Laws 1977, LB 115, § 3; R.S.1943, (1988), § 60-406.01; Laws 1989, LB 285, § 43; Laws 1992, LB 1178, § 2; Laws 1996, LB 1044, § 280; Laws 1999, LB 704, § 10; Laws 2001, LB 34, § 2; Laws 2004, LB 559, § 2; Laws 2007, LB296, § 229.
Operative date July 1, 2007.

Cross Reference

Uniform Anatomical Gift Act, see section 71-4812.

(g) PROVISIONS APPLICABLE TO OPERATION OF MOTOR VEHICLES OTHER THAN COMMERCIAL

60-4,118.02 Health Advisory Board; created; members; terms; meetings. (1) There is hereby created the Health Advisory Board which shall consist of six health care providers appointed by the director with the advice and recommendation of the Department of Health and Human Services. The members of the board shall consist of one general practice physician, one physician engaged in the practice of ophthalmology, one physician engaged in the practice of orthopedic surgery, one physician engaged in the practice of neurological medicine and surgery, one optometrist, and one psychiatrist. Each member of the board shall be licensed to practice his or her profession pursuant to the Uniform Credentialing Act.

(2) Of the initial members of the board, two shall be appointed for four years, two shall be appointed for three years, and two shall be appointed for two years. Thereafter, each member shall be appointed for a term of four years and until a successor is appointed and qualified. If a vacancy occurs for any reason other than the expiration of a term, the Director of Motor Vehicles may appoint a person licensed in the same type of professional practice as the member being replaced to serve out the unexpired term. Members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(3) The board shall meet as necessary at the call of the director. At the initial meeting of the board following completion of the initial appointments, the board shall select from among its members a chairperson and shall designate any other officers or committees as it deems necessary. The board may select officers and committees annually or as necessary to fill vacancies and to carry out duties of the board.

Source: Laws 1994, LB 211, § 6; Laws 1996, LB 1044, § 281; Laws 2007, LB296, § 230; Laws 2007, LB463, § 1174.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 230, with LB 463, section 1174, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Uniform Credentialing Act, see section 38-101.

60-4,120.01 Provisional operator's permit; application; issuance; operation restrictions. (1)(a) Any person who is at least sixteen years of age but less than eighteen years of age may be issued a provisional operator's permit by the Department of Motor Vehicles. The provisional operator's permit shall expire on the applicant's eighteenth birthday.

(b) No provisional operator's permit shall be issued to any person unless such person:

(i) Has possessed a valid Nebraska LPD-learner's permit for at least a six-month period beginning on the date of issuance of such person's LPD-learner's permit; and

(ii) Has not accumulated three or more points pursuant to section 60-4,182 during the six-month period immediately preceding the date of the application for the provisional operator's permit.

(c) The requirements for the provisional operator's permit prescribed in subdivisions (2)(a) and (b) of this section may be completed prior to the applicant's sixteenth birthday. A person may apply for a provisional operator's permit and take the driving test and the written examination, if required, at any time within sixty days prior to his or her sixteenth birthday upon proof of age in the manner provided in section 60-484.

(2) In order to obtain a provisional operator's permit, the applicant shall present to the examiner (a)(i) proof of successful completion of a department-approved driver safety course which includes behind-the-wheel driving specifically emphasizing (A) the effects of the consumption of alcohol on a person operating a motor vehicle, (B) occupant protection systems, (C) risk assessment, and (D) railroad crossing safety and (ii) proof of successful completion of a written examination and driving test administered by a driver safety course instructor or (b) a certificate in a form prescribed by the department, signed by a parent, guardian, or licensed driver at least twenty-one years of age, verifying that the applicant has completed fifty hours of lawful motor vehicle operation including at least ten hours of motor vehicle operation between sunset and sunrise, under conditions that reflect department-approved driver safety course curriculum, with a parent, guardian, or adult at least twenty-one years of age, who has a current Nebraska operator's license or who is licensed in another state. If the applicant presents such a certificate, the applicant shall be required to successfully complete a driving test administered by an examiner of the department. The written examination shall be waived if the applicant surrenders a Nebraska LPD-learner's permit or has been issued a Nebraska LPE-learner's permit after January 1, 2006, and such permit is valid or has expired no more than one year prior to surrender. However, the department shall not waive the written examination if the provisional operator's permit being applied for contains a class or endorsement which is different from the class or endorsement of the LPD-learner's or LPE-learner's permit. Upon presentation to the examiner by the applicant of a form prescribed by the department showing successful completion of the driver safety

course, the examiner shall waive the written examination and driving test. Upon presentation to the examiner of the certificate, the examiner shall waive the written examination but not the driving test. The examiner shall waive the written examination and the driving test if the applicant has been issued a school permit and such permit is valid or has expired no more than one year prior to application. The written examination shall not be waived if the provisional operator's permit being applied for contains a class or endorsement which is different from the class or endorsement of the school permit.

(3)(a) The holder of a provisional operator's permit shall only operate a motor vehicle on the highways of this state during the period beginning at 6 a.m. and ending at 12 midnight except when he or she is en route to or from his or her residence to his or her place of employment or a school activity. The holder of a provisional operator's permit may operate a motor vehicle on the highways of this state at any hour of the day or night if accompanied by a parent, guardian, or adult at least twenty-one years of age, who has a current Nebraska operator's license or who is licensed in another state.

(b) The holder of a provisional operator's permit shall only operate a motor vehicle on the highways of this state during the first six months of holding the permit with no more than one passenger who is not an immediate family member and who is under nineteen years of age.

(c) The holder of a provisional operator's permit shall not use any type of interactive wireless communication device while operating a motor vehicle on the highways of this state.

(d) Enforcement of subdivisions (a), (b), and (c) of this subsection shall be accomplished only as a secondary action when the holder of the provisional operator's permit has been cited or charged with a violation of some other law.

(4) The county treasurer shall collect the fee prescribed in section 60-4,115 for the issuance of each provisional operator's permit.

Source: Laws 1998, LB 320, § 7; Laws 1999, LB 704, § 20; Laws 2001, LB 387, § 6; Laws 2001, LB 574, § 15; Laws 2005, LB 1, § 8; Laws 2005, LB 675, § 2; Laws 2007, LB415, § 4.
Operative date January 1, 2008.

60-4,123 LPD-learner's permit; application; issuance; operation restrictions. (1) Any person who is at least fifteen years of age may apply for an LPD-learner's permit from the Department of Motor Vehicles. In order to obtain an LPD-learner's permit, the applicant shall successfully complete a written examination. A person may take the written examination beginning sixty days prior to his or her fifteenth birthday but shall not be issued a permit until he or she is fifteen years of age. The written examination shall be waived for any person who has been issued an LPE-learner's permit after January 1, 2006.

(2) Upon successful completion of the written examination and the payment of a fee, the applicant shall be issued an LPD-learner's permit from the county treasurer. The permit shall be valid for twelve months.

(3)(a) The holder of an LPD-learner's permit shall only operate a motor vehicle on the highways of this state if he or she is accompanied at all times by a licensed operator who is at least twenty-one years of age and who has been licensed by this state or another state and if he or she is actually occupying the seat beside the licensed operator or, in the case of a

motorcycle or moped, if he or she is within visual contact of and under the supervision of, in the case of a motorcycle, a licensed motorcycle operator or, in the case of a moped, a licensed motor vehicle operator.

(b) The holder of an LPD-learner's permit shall not use any type of interactive wireless communication device while operating a motor vehicle on the highways of this state. Enforcement of this subdivision shall be accomplished only as a secondary action when the holder of the LPD-learner's permit has been cited or charged with a violation of some other law.

(4) The county treasurer shall collect the fee prescribed in section 60-4,115 for the issuance of each LPD-learner's permit.

Source: Laws 1989, LB 285, § 73; Laws 1991, LB 44, § 3; Laws 1998, LB 320, § 10; Laws 1999, LB 704, § 24; Laws 2001, LB 574, § 17; Laws 2005, LB 675, § 3; Laws 2007, LB415, § 5.
Operative date January 1, 2008.

60-4,124 School permit; LPE-learner's permit; issuance; operation restrictions; violations; penalty. (1) A person who is younger than sixteen years and three months of age but is older than fourteen years and two months of age may be issued, by the county treasurer, a school permit if such person lives a distance of one and one-half miles or more from the school he or she attends and either resides outside a city of the metropolitan, primary, or first class or attends a school which is outside a city of the metropolitan, primary, or first class and if such person has held an LPE-learner's permit for two months. A school permit shall not be issued until such person has appeared before an examiner to demonstrate that he or she is capable of successfully operating a motor vehicle, moped, or motorcycle and has in his or her possession an examiner's certificate authorizing the county treasurer to issue a school permit. In order to obtain an examiner's certificate, the applicant shall present to the examiner (a) proof of successful completion of a department-approved driver safety course which includes behind-the-wheel driving specifically emphasizing (i) the effects of the consumption of alcohol on a person operating a motor vehicle, (ii) occupant protection systems, (iii) risk assessment, and (iv) railroad crossing safety and (b)(i) proof of successful completion of a written examination and driving test administered by a driver safety course instructor or (ii) a certificate in a form prescribed by the department, signed by a parent, guardian, or licensed driver at least twenty-one years of age, verifying that the applicant has completed fifty hours of lawful motor vehicle operation, under conditions that reflect department-approved driver safety course curriculum, with a parent, guardian, or adult at least twenty-one years of age, who has a then current Nebraska operator's license or who is licensed in another state. The Department of Motor Vehicles shall waive the written examination if the applicant surrenders an LPE-learner's permit issued after January 1, 2006, and if such permit is valid or has expired no more than one year prior to application. The written examination shall not be waived if the permit being applied for contains a class or endorsement which is different from the class or endorsement of the LPE-learner's permit.

(2) A person holding a school permit may operate a motor vehicle, moped, or motorcycle:

(a) To and from where he or she attends school and between schools of enrollment over the most direct and accessible route by the nearest highway from his or her place of residence to transport such person or any family member who resides with such person to attend duly scheduled courses of instruction and extracurricular or school-related activities at the school he or she attends; or

(b) Under the personal supervision of a licensed operator. Such licensed operator shall be at least twenty-one years of age and licensed by this state or another state and shall actually occupy the seat beside the permitholder or, in the case of a motorcycle or moped, if the permitholder is within visual contact of and under the supervision of, in the case of a motorcycle, a licensed motorcycle operator or, in the case of a moped, a licensed motor vehicle operator.

(3) The holder of a school permit shall not use any type of interactive wireless communication device while operating a motor vehicle on the highways of this state. Enforcement of this subsection shall be accomplished only as a secondary action when the holder of the school permit has been cited or charged with a violation of some other law.

(4) A person who is younger than sixteen years of age but is over fourteen years of age may be issued an LPE-learner's permit from the county treasurer, which permit shall be valid for a period of three months. An LPE-learner's permit shall not be issued until such person successfully completes a written examination prescribed by the department and demonstrates that he or she has sufficient powers of eyesight to safely operate a motor vehicle, moped, or motorcycle.

(5)(a) While holding the LPE-learner's permit, the person may operate a motor vehicle on the highways of this state if he or she has seated next to him or her a person who is a licensed operator or, in the case of a motorcycle or moped, if he or she is within visual contact of and is under the supervision of a person who, in the case of a motorcycle, is a licensed motorcycle operator or, in the case of a moped, is a licensed motor vehicle operator. Such licensed motor vehicle or motorcycle operator shall be at least twenty-one years of age and licensed by this state or another state.

(b) The holder of an LPE-learner's permit shall not use any type of interactive wireless communication device while operating a motor vehicle on the highways of this state. Enforcement of this subdivision shall be accomplished only as a secondary action when the holder of the LPE-learner's permit has been cited or charged with a violation of some other law.

(6) The county treasurer shall collect the fee prescribed in section 60-4,115 from each successful applicant for a school or LPE-learner's permit. All school permits shall be subject to impoundment or revocation under the terms of section 60-496. Any person who violates the terms of a school permit shall be guilty of an infraction and shall not be eligible for another operator's license or school, farm, LPD-learner's, or LPE-learner's permit until he or she has attained the age of sixteen years.

Source: Laws 1989, LB 285, § 74; Laws 1998, LB 320, § 11; Laws 2001, LB 387, § 8; Laws 2001, LB 574, § 18; Laws 2005, LB 675, § 4; Laws 2006, LB 853, § 9; Laws 2007, LB415, § 6.
Operative date January 1, 2008.

(h) PROVISIONS APPLICABLE TO OPERATION
OF COMMERCIAL MOTOR VEHICLES

60-4,147.02 Hazardous materials endorsement; USA PATRIOT Act requirements. No endorsement authorizing the driver to operate a commercial motor vehicle transporting hazardous materials shall be issued, renewed, or transferred by the Department of Motor Vehicles unless the endorsement is issued, renewed, or transferred in conformance with the requirements of section 1012 of the federal Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, USA PATRIOT Act, 49 U.S.C. 5103a, including all amendments and federal rules and regulations adopted and promulgated pursuant thereto as of January 1, 2007, for the issuance of licenses to operate commercial motor vehicles transporting hazardous materials.

Source: Laws 2005, LB 76, § 17; Laws 2006, LB 853, § 12; Laws 2007, LB239, § 5.
Effective date September 1, 2007.

60-4,164.01 Alcoholic liquor; blood test; withdrawing requirements; damages; liability. (1) Any physician, registered nurse, other trained person employed by a licensed health care facility or health care service defined in the Health Care Facility Licensure Act, a clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act, as amended, to withdraw human blood for scientific or medical purposes, or a hospital shall be an agent of the State of Nebraska when performing the act of withdrawing blood at the request of a peace officer pursuant to section 60-4,164. The state shall be liable in damages for any illegal or negligent acts or omissions of such agents in performing the act of withdrawing blood. The agent shall not be individually liable in damages or otherwise for any act done or omitted in performing the act of withdrawing blood at the request of a peace officer pursuant to such section except for acts of willful, wanton, or gross negligence of the agent or of persons employed by such agent.

(2) Any person listed in subsection (1) of this section withdrawing a blood specimen for purposes of section 60-4,164 shall, upon request, furnish to any law enforcement agency or the person being tested a certificate stating that such specimen was taken in a medically acceptable manner. The certificate shall be signed under oath before a notary public and shall be admissible in any proceeding as evidence of the statements contained in the certificate. The form of the certificate shall be prescribed by the Department of Health and Human Services and such forms shall be made available to the persons listed in subsection (1) of this section.

Source: Laws 1997, LB 210, § 4; Laws 2000, LB 819, § 75; Laws 2000, LB 1115, § 6; Laws 2007, LB296, § 231.
Operative date July 1, 2007.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

(k) POINT SYSTEM

60-4,182 Point system; offenses enumerated. In order to prevent and eliminate successive traffic violations, there is hereby provided a point system dealing with traffic violations as disclosed by the files of the director. The following point system shall be adopted:

- (1) Conviction of motor vehicle homicide - 12 points;
- (2) Third offense drunken driving in violation of any city or village ordinance or of section 60-6,196, as disclosed by the records of the director, regardless of whether the trial court found the same to be a third offense - 12 points;
- (3) Failure to stop and render aid as required under section 60-697 in the event of involvement in a motor vehicle accident resulting in the death or personal injury of another - 6 points;
- (4) Failure to stop and report as required under section 60-696 or any city or village ordinance in the event of a motor vehicle accident resulting in property damage - 6 points;
- (5) Driving a motor vehicle while under the influence of alcoholic liquor or any drug or when such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or per two hundred ten liters of his or her breath in violation of any city or village ordinance or of section 60-6,196 - 6 points;
- (6) Willful reckless driving in violation of any city or village ordinance or of section 60-6,214 or 60-6,217 - 6 points;
- (7) Careless driving in violation of any city or village ordinance or of section 60-6,212 - 4 points;
- (8) Negligent driving in violation of any city or village ordinance - 3 points;
- (9) Reckless driving in violation of any city or village ordinance or of section 60-6,213 - 5 points;
- (10) Speeding in violation of any city or village ordinance or any of sections 60-6,185 to 60-6,190 and 60-6,313:
 - (a) Not more than five miles per hour over the speed limit - 1 point;
 - (b) More than five miles per hour but not more than ten miles per hour over the speed limit - 2 points; and
 - (c) More than ten miles per hour over the speed limit - 3 points, except that one point shall be assessed upon conviction of exceeding by not more than ten miles per hour, two points shall be assessed upon conviction of exceeding by more than ten miles per hour but not more than fifteen miles per hour, and three points shall be assessed upon conviction of exceeding by more than fifteen miles per hour the speed limits provided for in subdivision (1)(e), (f), (g), or (h) of section 60-6,186;
- (11) Failure to yield to a pedestrian not resulting in bodily injury to a pedestrian - 2 points;
- (12) Failure to yield to a pedestrian resulting in bodily injury to a pedestrian - 4 points; and
- (13) All other traffic violations involving the operation of motor vehicles by the operator for which reports to the Department of Motor Vehicles are required under sections 60-497.01

and 60-497.02, not including violations involving an occupant protection system pursuant to section 60-6,270, parking violations, violations for operating a motor vehicle without a valid operator's license in the operator's possession, muffler violations, overwidth, overheight, or overlength violations, motorcycle or moped protective helmet violations, or overloading of trucks - 1 point.

All such points shall be assessed against the driving record of the operator as of the date of the violation for which conviction was had. Points may be reduced by the department under section 60-4,188.

In all cases, the forfeiture of bail not vacated shall be regarded as equivalent to the conviction of the offense with which the operator was charged.

The point system shall not apply to persons convicted of traffic violations committed while operating a bicycle or an electric personal assistive mobility device as defined in section 60-618.02.

Source: Laws 1953, c. 219, § 1, p. 768; Laws 1955, c. 156, § 1, p. 457; Laws 1957, c. 168, § 1, p. 587; Laws 1957, c. 366, § 26, p. 1261; Laws 1959, c. 174, § 1, p. 625; Laws 1959, c. 169, § 2, p. 617; Laws 1961, c. 185, § 3, p. 571; Laws 1967, c. 235, § 2, p. 630; R.R.S.1943, § 39-7,128; Laws 1974, LB 590, § 1; Laws 1974, LB 873, § 4; Laws 1975, LB 381, § 4; Laws 1975, LB 328, § 1; Laws 1976, LB 265, § 1; Laws 1983, LB 204, § 1; Laws 1985, LB 496, § 2; Laws 1987, LB 430, § 3; Laws 1987, LB 224, § 3; Laws 1988, LB 428, § 6; Laws 1992, LB 958, § 2; R.S.Supp.,1992, § 39-669.26; Laws 1993, LB 370, § 80; Laws 1993, LB 575, § 17; Laws 1996, LB 901, § 2; Laws 2001, LB 166, § 3; Laws 2001, LB 773, § 14; Laws 2002, LB 1105, § 446; Laws 2006, LB 925, § 3; Laws 2007, LB35, § 1.
Effective date February 15, 2007.

Cross Reference

Assessment of points when person is placed on probation, see section 60-497.01.

ARTICLE 6

NEBRASKA RULES OF THE ROAD

(d) ACCIDENTS AND ACCIDENT REPORTING

Section.

- 60-696. Motor vehicle; accident; duty to stop; information to furnish; report; powers of peace officer; violation; penalty.
- 60-6,104. Accidents; body fluid; samples; test; report.
- 60-6,107. Accidents; Department of Health and Human Services; Department of Roads; adopt rules and regulations.
- (k) STOPPING, STANDING, PARKING, AND BACKING UP
- 60-6,164. Stopping, parking, or standing upon a roadway, freeway, or bridge; limitations; duties of driver.

(n) SPEED RESTRICTIONS

- 60-6,186. Speed; maximum limits; signs.

(o) ALCOHOL AND DRUG VIOLATIONS

- 60-6,197.03. Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; penalties.
- 60-6,201. Driving under influence of alcoholic liquor or drugs; chemical test; violation of statute or ordinance; results; competent evidence; permit; fee.
- 60-6,202. Driving under influence of alcoholic liquor or drugs; blood test; withdrawing requirements; damages; liability; when.

(t) WINDSHIELDS, WINDOWS, AND MIRRORS

- 60-6,261. Windshield and windows; funeral vehicles; exception.

(u) OCCUPANT PROTECTION SYSTEMS

- 60-6,265. Occupant protection system, defined.
- 60-6,267. Use of restraint system or occupant protection system; when; information and education program.

(y) SIZE, WEIGHT, AND LOAD

- 60-6,301. Vehicles; overload; reduce or shift load; exceptions; permit fee; warning citation; when.
- 60-6,304. Load; contents; requirements; violation; penalty.

(ff) SPECIAL RULES FOR ALL-TERRAIN VEHICLES

- 60-6,356. All-terrain vehicle; operation; restrictions; city or village ordinance; county board resolution.

(d) ACCIDENTS AND ACCIDENT REPORTING

60-696 Motor vehicle; accident; duty to stop; information to furnish; report; powers of peace officer; violation; penalty. (1) Except as provided in subsection (2) of this section, the driver of any vehicle involved in an accident upon a public highway, private road, or private drive, resulting in damage to property, shall (a) immediately stop such vehicle at the scene of such accident and (b) give his or her name, address, telephone number, and operator's license number to the owner of the property struck or the driver or occupants of any other vehicle involved in the collision.

(2) The driver of any vehicle involved in an accident upon a public highway, private road, or private drive, resulting in damage to an unattended vehicle or property, shall immediately stop such vehicle and leave in a conspicuous place in or on the unattended vehicle or property a written notice containing the information required by subsection (1) of this section. In addition, such driver shall, without unnecessary delay, report the collision, by telephone or otherwise, to an appropriate peace officer.

(3)(a) A peace officer may remove or cause to be removed from a roadway, without the consent of the driver or owner, any vehicle, cargo, or other property which is obstructing the roadway creating or aggravating an emergency situation or otherwise endangering the public safety. Any vehicle, cargo, or other property obstructing a roadway shall be removed by the most expeditious means available to clear the obstruction, giving due regard to the protection of the property removed.

(b) This subsection does not apply if an accident results in or is believed to involve the release of hazardous materials, hazardous substances, or hazardous wastes, as those terms are defined in section 75-362.

(4) Any person violating subsection (1) or (2) of this section is guilty of a Class II misdemeanor. If such person has had one or more convictions under this section in the twelve years prior to the date of the current conviction under this section, such person is guilty of a Class I misdemeanor. As part of any sentence, suspended sentence, or judgment of conviction under this section, the court shall order the defendant not to drive any motor vehicle for any purpose in the State of Nebraska for a period of one year from the date ordered by the court.

Source: Laws 1931, c. 110, § 28, p. 314; C.S.Supp.,1941, § 39-1159; R.S.1943, § 39-762; Laws 1947, c. 148, § 2(2), p. 409; Laws 1949, c. 119, § 2, p. 316; Laws 1949, c. 120, § 2, p. 317; Laws 1959, c. 169, § 1, p. 617; R.R.S.1943, § 39-762.01; Laws 1978, LB 748, § 26; R.S.1943, (1988), § 39-6,104.02; Laws 1993, LB 370, § 192; Laws 1994, LB 929, § 1; Laws 2001, LB 254, § 1; Laws 2006, LB 925, § 7; Laws 2007, LB561, § 1.
Effective date September 1, 2007.

Cross Reference

Operator's license, assessment of points, see sections 60-497.01 and 60-4,182 et seq.

60-6,104 Accidents; body fluid; samples; test; report. All samples and tests of body fluids under sections 60-6,101 to 60-6,103 shall be submitted to and performed by an individual possessing a valid permit issued by the Department of Health and Human Services for such purpose. Such tests shall be performed according to methods approved by the department. Such individual shall promptly perform such analysis and report the results thereof to the official submitting the sample.

Source: Laws 1974, LB 66, § 4; R.S.1943, (1988), § 39-6,104.09; Laws 1993, LB 370, § 200; Laws 1996, LB 1044, § 282; Laws 2007, LB296, § 232.
Operative date July 1, 2007.

60-6,107 Accidents; Department of Health and Human Services; Department of Roads; adopt rules and regulations. (1) Except as provided in subsection (2) of this section, the Department of Health and Human Services shall adopt necessary rules and regulations for the administration of the provisions of sections 60-6,101 to 60-6,106.

(2) The Department of Roads shall adopt and promulgate rules and regulations which shall provide for the release and disclosure of the results of tests conducted under sections 60-6,102 and 60-6,103.

Source: Laws 1974, LB 66, § 7; R.S.1943, (1988), § 39-6,104.12; Laws 1993, LB 370, § 203; Laws 1993, LB 590, § 5; Laws 1996, LB 1044, § 283; Laws 2007, LB296, § 233.
Operative date July 1, 2007.

(k) STOPPING, STANDING, PARKING, AND BACKING UP

60-6,164 Stopping, parking, or standing upon a roadway, freeway, or bridge; limitations; duties of driver. (1) No person shall stop, park, or leave standing any vehicle,

whether attended or unattended, upon a roadway outside of a business or residential district when it is practicable to stop, park, or leave such vehicle off such part of a highway, but in any event an unobstructed width of the roadway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicle shall be available from a distance of two hundred feet in each direction upon such highway. Such parking, stopping, or standing shall in no event exceed twenty-four hours.

(2) No person shall stop, park, or leave standing any vehicle on a freeway except in areas designated or unless so directed by a peace officer, except that when a vehicle is disabled or inoperable or the driver of the vehicle is ill or incapacitated, such vehicle shall be permitted to park, stop, or stand on the shoulder facing in the direction of travel with all wheels and projecting parts of such vehicle completely clear of the traveled lanes, but in no event shall such parking, standing, or stopping upon the shoulder of a freeway exceed twelve hours.

(3) No person, except law enforcement, fire department, emergency management, public or private ambulance, or authorized Department of Roads or local authority personnel, shall loiter or stand or park any vehicle upon any bridge, highway, or structure which is located above or below or crosses over or under the roadway of any highway or approach or exit road thereto.

(4) Whenever a vehicle is disabled or inoperable in a roadway or for any reason obstructs the regular flow of traffic for reasons other than an accident, the driver shall move or cause the vehicle to be moved as soon as practical so as to not obstruct the regular flow of traffic.

(5) This section does not apply to the driver of any vehicle which is disabled while on the roadway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position until such time as it can be removed pursuant to subsection (4) of this section.

Source: Laws 1973, LB 45, § 70; R.S.1943, (1988), § 39-670; Laws 1993, LB 370, § 260; Laws 1996, LB 43, § 11; Laws 2007, LB561, § 2.
Effective date September 1, 2007.

(n) SPEED RESTRICTIONS

60-6,186 Speed; maximum limits; signs. (1) Except when a special hazard exists that requires lower speed for compliance with section 60-6,185, the limits set forth in this section and sections 60-6,187, 60-6,188, 60-6,305, and 60-6,313 shall be the maximum lawful speeds unless reduced pursuant to subsection (2) of this section, and no person shall drive a vehicle on a highway at a speed in excess of such maximum limits:

- (a) Twenty-five miles per hour in any residential district;
- (b) Twenty miles per hour in any business district;
- (c) Fifty miles per hour upon any highway that is not dustless surfaced and not part of the state highway system;
- (d) Fifty-five miles per hour upon any dustless-surfaced highway not a part of the state highway system;
- (e) Sixty miles per hour upon any part of the state highway system other than an expressway or a freeway, except that the Department of Roads may, where existing design and traffic

conditions allow, according to an engineering study, authorize a speed limit five miles per hour greater;

(f) Sixty-five miles per hour upon an expressway that is part of the state highway system;

(g) Sixty-five miles per hour upon a freeway that is part of the state highway system but not part of the National System of Interstate and Defense Highways; and

(h) Seventy-five miles per hour upon the National System of Interstate and Defense Highways, except that the maximum speed limit shall be sixty miles per hour for:

(i) Any portion of the National System of Interstate and Defense Highways located in Douglas County; and

(ii) That portion of the National System of Interstate and Defense Highways designated as Interstate 180 in Lancaster County and Interstate 129 in Dakota County.

(2) The maximum speed limits established in subsection (1) of this section may be reduced by the Department of Roads or by local authorities pursuant to section 60-6,188 or 60-6,190.

(3) The Department of Roads and local authorities may erect and maintain suitable signs along highways under their respective jurisdictions in such number and at such locations as they deem necessary to give adequate notice of the speed limits established pursuant to subsection (1) or (2) of this section upon such highways.

Source: Laws 1973, LB 45, § 62; Laws 1974, LB 873, § 1; Laws 1975, LB 381, § 1; Laws 1977, LB 256, § 1; Laws 1987, LB 430, § 1; R.S.1943, (1988), § 39-662; Laws 1993, LB 370, § 282; Laws 1996, LB 901, § 7; Laws 2007, LB35, § 2.
Effective date February 15, 2007.

Cross Reference

Operator's license, assessment of points for speeding, see section 60-4,182 et seq.

(o) ALCOHOL AND DRUG VIOLATIONS

60-6,197.03 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; penalties. Any person convicted of a violation of section 60-6,196 or 60-6,197 shall be punished as follows:

(1) Except as provided in subdivision (2) of this section, if such person has not had a prior conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked or impounded for a period of six months from the date ordered by the court. Such revocation or impoundment shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked or impounded for a period of sixty days from the date ordered by the court unless otherwise authorized by an order issued pursuant to section 60-6,211.05, and such order of probation or sentence suspension shall also include, as one of its conditions, the payment of a four-hundred-dollar fine;

(2) If such person has not had a prior conviction and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of one year from the date ordered by the court. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked or impounded for a period of one year from the date ordered by the court unless otherwise authorized by an order issued pursuant to section 60-6,211.05, and such order of probation or sentence suspension shall also include, as conditions, the payment of a five-hundred-dollar fine and either confinement in the city or county jail for two days or the imposition of not less than one hundred twenty hours of community service;

(3) Except as provided in subdivision (5) of this section, if such person has had one prior conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of one year from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked or impounded for a period of one year from the date ordered by the court unless otherwise authorized by an order issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01, and such order of probation or sentence suspension shall also include, as conditions, the payment of a five-hundred-dollar fine and either confinement in the city or county jail for ten days or the imposition of not less than two hundred forty hours of community service;

(4) Except as provided in subdivision (6) of this section, if such person has had two prior convictions, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least two years but not more than fifteen years from the date ordered by the court unless otherwise authorized by an order issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01, and

such order of probation or sentence suspension shall also include, as conditions, the payment of a six-hundred-dollar fine and confinement in the city or county jail for thirty days;

(5) If such person has had one prior conviction and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class I misdemeanor, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of at least one year but not more than fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least ninety days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked or impounded for a period of at least one year but not more than fifteen years from the date ordered by the court unless otherwise authorized by an order issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01, and such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for thirty days;

(6) If such person has had two prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class IIIA felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least one hundred eighty days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least five years but not more than fifteen years from the date ordered by the court unless otherwise authorized by an order issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01, and such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for sixty days;

(7) Except as provided in subdivision (8) of this section, if such person has had three prior convictions, such person shall be guilty of a Class IIIA felony, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least one hundred eighty days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court unless otherwise authorized by an order issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01, and such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for ninety days;

(8) If such person has had three prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class III felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court unless otherwise authorized by an order issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01, and such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for one hundred twenty days;

(9) Except as provided in subdivision (10) of this section, if such person has had four or more prior convictions, such person shall be guilty of a Class III felony, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court unless otherwise authorized by an order issued pursuant to section 60-6,211.05

and shall issue an order pursuant to section 60-6,197.01, and such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for one hundred eighty days; and

(10) If such person has had four or more prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class II felony and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court unless otherwise authorized by an order issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01, and such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for one hundred eighty days.

Source: Laws 2004, LB 208, § 13; Laws 2005, LB 594, § 3; Laws 2006, LB 925, § 11; Laws 2007, LB578, § 4.
Effective date September 1, 2007.

60-6,201 Driving under influence of alcoholic liquor or drugs; chemical test; violation of statute or ordinance; results; competent evidence; permit; fee. (1) Any test made under section 60-6,197, if made in conformity with the requirements of this section, shall be competent evidence in any prosecution under a state statute or city or village ordinance involving operating a motor vehicle while under the influence of alcoholic liquor or drugs or involving driving or being in actual physical control of a motor vehicle when the concentration of alcohol in the blood or breath is in excess of allowable levels.

(2) Any test made under section 60-6,211.02, if made in conformity with the requirements of this section, shall be competent evidence in any prosecution involving operating or being in actual physical control of a motor vehicle in violation of section 60-6,211.01.

(3) To be considered valid, tests of blood, breath, or urine made under section 60-6,197 or tests of blood or breath made under section 60-6,211.02 shall be performed according to methods approved by the Department of Health and Human Services and by an individual possessing a valid permit issued by such department for such purpose, except that a physician, registered nurse, or other trained person employed by a licensed health care facility or health care service which is defined in the Health Care Facility Licensure Act or clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as such act existed on September 1, 2001, or Title XVIII or XIX of the federal Social Security Act, as

such act existed on September 1, 2001, to withdraw human blood for scientific or medical purposes, acting at the request of a peace officer, may withdraw blood for the purpose of a test to determine the alcohol concentration or the presence of drugs and no permit from the department shall be required for such person to withdraw blood pursuant to such an order. The department may approve satisfactory techniques or methods to perform such tests and may ascertain the qualifications and competence of individuals to perform such tests and issue permits which shall be subject to termination or revocation at the discretion of the department.

(4) A permit fee may be established by regulation by the department which shall not exceed the actual cost of processing the initial permit. Such fee shall be charged annually to each permit holder. The fees shall be used to defray the cost of processing and issuing the permits and other expenses incurred by the department in carrying out this section. The fee shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund as a laboratory service fee.

(5) Relevant evidence shall not be excluded in any prosecution under a state statute or city or village ordinance involving operating a motor vehicle while under the influence of alcoholic liquor or drugs or involving driving or being in actual physical control of a motor vehicle when the concentration of alcohol in the blood or breath is in excess of allowable levels on the ground that the evidence existed or was obtained outside of this state.

Source: Laws 1959, c. 168, § 4, p. 614; Laws 1963, c. 228, § 2, p. 715; Laws 1963, c. 229, § 2, p. 716; Laws 1971, LB 948, § 4; C.S.Supp., 1972, § 39-727.06; Laws 1986, LB 1047, § 1; Laws 1987, LB 224, § 2; Laws 1990, LB 799, § 4; Laws 1992, LB 872, § 2; Laws 1992, LB 291, § 6; R.S.Supp., 1992, § 39-669.11; Laws 1993, LB 370, § 296; Laws 1993, LB 564, § 9; Laws 1996, LB 1044, § 284; Laws 2000, LB 819, § 76; Laws 2000, LB 1115, § 7; Laws 2001, LB 773, § 17; Laws 2007, LB 296, § 234. Operative date July 1, 2007.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

60-6,202 Driving under influence of alcoholic liquor or drugs; blood test; withdrawing requirements; damages; liability; when. (1) Any physician, registered nurse, other trained person employed by a licensed health care facility or health care service defined in the Health Care Facility Licensure Act, a clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act, as amended, to withdraw human blood for scientific or medical purposes, or a hospital shall be an agent of the State of Nebraska when performing the act of withdrawing blood at the request of a peace officer pursuant to sections 60-6,197 and 60-6,211.02. The state shall be liable in damages for any illegal or negligent acts or omissions of such agents in performing the act of withdrawing blood. The agent shall not be individually liable in damages or otherwise for any act done or omitted in performing the act of withdrawing blood at the request of a peace officer pursuant to such sections except for acts of willful, wanton, or gross negligence of the agent or of persons employed by such agent.

(2) Any person listed in subsection (1) of this section withdrawing a blood specimen for purposes of section 60-6,197 or 60-6,211.02 shall, upon request, furnish to any law enforcement agency or the person being tested a certificate stating that such specimen was

taken in a medically acceptable manner. The certificate shall be signed under oath before a notary public and shall be admissible in any proceeding as evidence of the statements contained in the certificate. The form of the certificate shall be prescribed by the Department of Health and Human Services and such forms shall be made available to the persons listed in subsection (1) of this section.

Source: Laws 1959, c. 168, § 5, p. 614; Laws 1971, LB 948, § 5; C.S.Supp.,1972, § 39-727.07; Laws 1974, LB 679, § 1; Laws 1975, LB 140, § 1; Laws 1992, LB 291, § 7; R.S.Supp.,1992, § 39-669.12; Laws 1993, LB 370, § 297; Laws 1993, LB 564, § 10; Laws 1997, LB 210, § 5; Laws 2000, LB 819, § 77; Laws 2000, LB 1115, § 8; Laws 2007, LB296, § 235.
Operative date July 1, 2007.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

(t) WINDSHIELDS, WINDOWS, AND MIRRORS

60-6,261 Windshield and windows; funeral vehicles; exception. Sections 60-6,257 to 60-6,259 shall not apply to the side or rear windows of funeral coaches, hearses, or other vehicles operated in the normal course of business by a funeral establishment licensed under section 38-1419.

Source: Laws 1989, LB 155, § 6; R.S.Supp.,1992, § 39-6,136.05; Laws 1993, LB 370, § 357; Laws 2007, LB463, § 1175.
Operative date December 1, 2008.

(u) OCCUPANT PROTECTION SYSTEMS

60-6,265 Occupant protection system, defined. For purposes of sections 60-6,266 to 60-6,273, occupant protection system means a system utilizing a lap belt, a shoulder belt, or any combination of belts installed in a motor vehicle which (1) restrains drivers and passengers and (2) conforms to Federal Motor Vehicle Safety Standards, 49 C.F.R. 571.207, 571.208, 571.209, and 571.210, as such standards existed on January 1, 2007, or to the federal motor vehicle safety standards for passenger restraint systems applicable for the motor vehicle's model year.

Source: Laws 1993, LB 370, § 361; Laws 2004, LB 227, § 1; Laws 2006, LB 853, § 19; Laws 2007, LB239, § 6.
Effective date September 1, 2007.

60-6,267 Use of restraint system or occupant protection system; when; information and education program. (1) Any person in Nebraska who drives any motor vehicle which has or is required to have an occupant protection system shall ensure that:

(a) All children up to six years of age being transported by such vehicle use a child passenger restraint system of a type which meets Federal Motor Vehicle Safety Standard 213 as developed by the National Highway Traffic Safety Administration, as such standard existed on January 1, 2007, and which is correctly installed in such vehicle; and

(b) All children six years of age and less than eighteen years of age being transported by such vehicle use an occupant protection system.

This subsection shall apply to every motor vehicle which is equipped with an occupant protection system or is required to be equipped with restraint systems pursuant to Federal Motor Vehicle Safety Standard 208, as such standard existed on January 1, 2007, except taxicabs, mopeds, motorcycles, and any motor vehicle designated by the manufacturer as a 1963 year model or earlier which is not equipped with an occupant protection system.

(2) Whenever any licensed physician determines, through accepted medical procedures, that use of a child passenger restraint system by a particular child would be harmful by reason of the child's weight, physical condition, or other medical reason, the provisions of subsection (1) of this section shall be waived. The driver of any vehicle transporting such a child shall carry on his or her person or in the vehicle a signed written statement of the physician identifying the child and stating the grounds for such waiver.

(3) The drivers of authorized emergency vehicles shall not be subject to the requirements of subsection (1) of this section when operating such authorized emergency vehicles pursuant to their employment.

(4) A driver of a motor vehicle shall not be subject to the requirements of subsection (1) of this section if the motor vehicle is being operated in a parade or exhibition and the parade or exhibition is being conducted in accordance with applicable state law and local ordinances and resolutions.

(5) The Department of Motor Vehicles shall develop and implement an ongoing statewide public information and education program regarding the use of child passenger restraint systems and occupant protection systems and the availability of distribution and discount programs for child passenger restraint systems.

(6) All persons being transported by a motor vehicle operated by a holder of a provisional operator's permit or a school permit shall use such motor vehicle's occupant protection system.

Source: Laws 1983, LB 306, § 2; Laws 1985, LB 259, § 1; Laws 1990, LB 958, § 1; Laws 1992, LB 958, § 3; R.S.Supp., 1992, § 39-6, 103.01; Laws 1993, LB 370, § 363; Laws 2000, LB 410, § 1; Laws 2002, LB 1073, § 1; Laws 2004, LB 227, § 2; Laws 2006, LB 853, § 20; Laws 2007, LB 239, § 7. Effective date September 1, 2007.

(y) SIZE, WEIGHT, AND LOAD

60-6,301 Vehicles; overload; reduce or shift load; exceptions; permit fee; warning citation; when. When any motor vehicle, semitrailer, or trailer is operated upon the highways of this state carrying a load in excess of the maximum weight permitted by section 60-6,294, the load shall be reduced or shifted to within such maximum tolerance before being permitted to operate on any public highway of this state, except that:

(1) If any motor vehicle, semitrailer, or trailer exceeds the maximum load on only one axle, only one tandem axle, or only one group of axles when (a) the distance between the first and last axle of such group of axles is twelve feet or less, (b) the excess axle load is no more than five percent in excess of the maximum load for such axle, tandem axle, or group of axles permitted by such section, while the vehicle or combination of vehicles is within the

maximum gross load, and (c) the load on such vehicle is such that it can be shifted or the configuration of the vehicle can be changed so that all axles, tandem axle, or groups of axles are within the maximum permissible limit for such axle, tandem axle, or group of axles, such shift or change of configuration may be made without penalty;

(2) Any motor vehicle, semitrailer, or trailer carrying only a load of livestock may exceed the maximum load as permitted by such section on only one axle, only one tandem axle, or only one group of axles when the distance between the first and last axle of the group of axles is six feet or less if the excess load on the axle, tandem axle, or group of axles is caused by a shifting of the weight of the livestock by the livestock and if the vehicle or combination of vehicles is within the maximum gross load as permitted by such section;

(3) With a permit issued by the Department of Roads or the Nebraska State Patrol, a truck with an enclosed body and a compacting mechanism, designed and used exclusively for the collection and transportation of garbage or refuse, may exceed the maximum load as permitted by such section by no more than twenty percent on only one axle, only one tandem axle, or only one group of axles when the vehicle is laden with garbage or refuse if the vehicle is within the maximum gross load as permitted by such section. There shall be a permit fee of ten dollars per month or one hundred dollars per year. The permit may be issued for one or more months up to one year, and the term of applicability shall be stated on the permit;

(4) Any motor vehicle, semitrailer, or trailer carrying any kind of a load, including livestock, which exceeds the legal maximum gross load by five percent or less may proceed on its itinerary and unload the cargo carried thereon to the maximum legal gross weight at the first unloading facility on the itinerary where the cargo can be properly protected. All material so unloaded shall be cared for by the owner or operator of such vehicle at the risk of such owner or operator; and

(5) Any motor vehicle, semitrailer, or trailer carrying grain or other seasonally harvested products may operate from the field where such grain or products are harvested to storage, market, or stockpile in the field or from stockpile to market or factory up to seventy miles with a load that exceeds the maximum load permitted by section 60-6,294 by fifteen percent on any tandem axle, group of axles, and gross weight. Any truck with no more than a single rear axle carrying grain or other seasonally harvested products may operate from the field where such grain or products are harvested to storage, market, or stockpile in the field or from stockpile to market or factory up to seventy miles with a load that exceeds the maximum load permitted by section 60-6,294 by fifteen percent on any single axle and gross weight. The owner or a representative of the owner of the agricultural product shall furnish the driver of the loaded vehicle a signed statement of origin and destination.

Nothing in this section shall be construed to permit to be operated on the National System of Interstate and Defense Highways any vehicle or combination of vehicles which exceeds any of the weight limitations applicable to such system as contained in section 60-6,294.

If the maximum legal gross weight or axle weight of any vehicle is exceeded by five percent or less and the arresting peace officer or carrier enforcement officer has reason to believe

that such excessive weight is caused by snow, ice, or rain, the officer may issue a warning citation to the operator.

Source: Laws 1953, c. 134, § 5, p. 420; Laws 1955, c. 150, § 1, p. 446; Laws 1963, c. 226, § 3, p. 710; Laws 1969, c. 318, § 4, p. 1156; Laws 1973, LB 491, § 5; R.S.Supp.,1973, § 39-723.07; Laws 1974, LB 920, § 5; Laws 1976, LB 823, § 1; Laws 1977, LB 427, § 3; Laws 1980, LB 785, § 4; Laws 1984, LB 726, § 6; Laws 1986, LB 833, § 2; R.S.1943, (1988), § 39-6,185; Laws 1993, LB 370, § 397; Laws 2000, LB 1361, § 10; Laws 2007, LB148, § 1.
Effective date September 1, 2007.

60-6,304 Load; contents; requirements; violation; penalty. (1) No vehicle shall be driven or moved on any highway unless the vehicle is so constructed or loaded as to prevent its contents from dropping, sifting, leaking, or otherwise escaping from the vehicle.

(2) No person shall transport any sand, gravel, rock less than two inches in diameter, or refuse in any vehicle on any hard-surfaced state highway if such material protrudes above the sides of that part of the vehicle in which it is being transported unless such material is enclosed or completely covered with canvas or similar covering.

(3) No person shall drive or move a motor vehicle, trailer, or semitrailer upon any highway unless the cargo or contents carried by the motor vehicle, trailer, or semitrailer are properly distributed and adequately secured to prevent the falling of cargo or contents from the vehicle. The tailgate, doors, tarpaulins, and any other equipment used in the operation of the motor vehicle, trailer, or semitrailer or in the distributing or securing of the cargo or contents carried by the motor vehicle, trailer, or semitrailer shall be secured to prevent cargo or contents falling from the vehicle. The means of securement to the motor vehicle, trailer, or semitrailer must be either tiedowns and tiedown assemblies of adequate strength or sides, sideboards, or stakes and a rear endgate, endboard, or stakes strong enough and high enough to assure that cargo or contents will not fall from the vehicle.

(4) Any person who violates any provision of this section shall be guilty of a Class IV misdemeanor.

Source: Laws 1969, c. 304, § 1, p. 1095; C.S.Supp.,1972, § 39-735.02; Laws 1974, LB 593, § 7; Laws 1977, LB 41, § 21; R.S.1943, (1988), § 39-6,129; Laws 1993, LB 370, § 400; Laws 1993, LB 575, § 28; Laws 2002, LB 1105, § 463; Laws 2007, LB147, § 1.
Effective date September 1, 2007.

(ff) SPECIAL RULES FOR ALL-TERRAIN VEHICLES

60-6,356 All-terrain vehicle; operation; restrictions; city or village ordinance; county board resolution. (1) An all-terrain vehicle shall not be operated on any controlled-access highway with more than two marked traffic lanes, and the crossing of any controlled-access highway with more than two marked traffic lanes shall not be permitted. Subsections (2), (3), and (5) through (8) of this section authorize and apply to operation of an all-terrain vehicle only on a highway other than a controlled-access highway with more than two marked traffic lanes.

(2) An all-terrain vehicle may be operated in accordance with the operating requirements of subsection (3) of this section:

(a) Outside the corporate limits of a city, village, or unincorporated village if incidental to the vehicle's use for agricultural purposes;

(b) Within the corporate limits of a city or village if authorized by the city or village by ordinance adopted in accordance with this section; or

(c) Within an unincorporated village if authorized by the county board of the county in which the unincorporated village is located by resolution in accordance with this section.

(3) An all-terrain vehicle may be operated as authorized in subsection (2) of this section when such operation occurs only between the hours of sunrise and sunset. Any person operating an all-terrain vehicle as authorized in subsection (2) of this section shall have a valid Class O operator's license or a farm permit as provided in section 60-4,126, shall have liability insurance coverage for the all-terrain vehicle while operating the all-terrain vehicle on a highway, and shall not operate such vehicle at a speed in excess of thirty miles per hour. The person operating the all-terrain vehicle shall provide proof of such insurance coverage to any peace officer requesting such proof within five days of such a request. When operating an all-terrain vehicle as authorized in subsection (2) of this section, the headlight and taillight of the vehicle shall be on and the vehicle shall be equipped with a bicycle safety flag which extends not less than five feet above ground attached to the rear of such vehicle. The bicycle safety flag shall be triangular in shape with an area of not less than thirty square inches and shall be day-glow in color.

(4) All-terrain vehicles may be operated without complying with subsection (3) of this section on highways in parades which have been authorized by the State of Nebraska or any department, board, commission, or political subdivision of the state.

(5) Subject to subsection (1) of this section, the crossing of a highway shall be permitted by an all-terrain vehicle without complying with subsection (3) of this section only if:

(a) The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;

(b) The vehicle is brought to a complete stop before crossing the shoulder or roadway of the highway;

(c) The operator yields the right-of-way to all oncoming traffic that constitutes an immediate potential hazard;

(d) In crossing a divided highway, the crossing is made only at an intersection of such highway with another highway; and

(e) Both the headlight and taillight of the vehicle are on when the crossing is made.

(6) All-terrain vehicles may be operated outside the corporate limits of any municipality by electric utility personnel within the course of their employment in accordance with the operation requirements of subsection (3) of this section, except that the operation of the vehicle pursuant to this subsection need not be limited to the hours between sunrise and sunset.

(7) A city or village may adopt an ordinance authorizing the operation of all-terrain vehicles within the corporate limits of the city or village if the operation is in accordance with

subsection (3) of this section. The city or village may place other restrictions on the operation of all-terrain vehicles within its corporate limits.

(8) A county board may adopt a resolution authorizing the operation of all-terrain vehicles within any unincorporated village within the county if the operation is in accordance with subsection (3) of this section. The county may place other restrictions on the operation of all-terrain vehicles within the unincorporated village.

Source: Laws 1987, LB 80, § 2; Laws 1989, LB 114, § 1; Laws 1989, LB 285, § 138; R.S.Supp., 1992, § 60-2802; Laws 1993, LB 370, § 452; Laws 2007, LB307, § 1.
Effective date September 1, 2007.

ARTICLE 13

WEIGHING STATIONS

Section.

60-1303. Weighing stations; portable scales; operation; carrier enforcement division; rules and regulations.

60-1303 Weighing stations; portable scales; operation; carrier enforcement division; rules and regulations. (1) The Nebraska State Patrol is hereby designated as the agency to operate the weighing stations and portable scales and to perform carrier enforcement duties.

(2)(a) On and after July 20, 2002, officers of the Nebraska State Patrol appointed to operate the weighing stations and portable scales and to perform carrier enforcement duties shall be known as the carrier enforcement division. The Superintendent of Law Enforcement and Public Safety shall appoint officers of the Nebraska State Patrol to the carrier enforcement division, including officers as prescribed in sections 81-2001 to 81-2009, and carrier enforcement officers as prescribed in sections 60-1301 to 60-1309.

(b) The employees within the Nebraska State Patrol designated to operate the weighing stations and portable scales and to perform carrier enforcement duties before July 20, 2002, and not authorized to act under subdivisions (1) through (8) of section 81-2005 shall be known as carrier enforcement officers.

(3) All carrier enforcement officers shall be bonded or insured as required by section 11-201. Premiums shall be paid from the money appropriated for the construction, maintenance, and operation of the state weighing stations.

(4) All employees of the Nebraska State Patrol who are carrier enforcement officers and who are not officers of the Nebraska State Patrol with the powers and duties prescribed in sections 81-2001 to 81-2009 shall be members of the State Employees Retirement System of the State of Nebraska. Officers of the Nebraska State Patrol who are carrier enforcement officers on July 20, 2002, who subsequently become officers of the Nebraska State Patrol with the powers and duties prescribed in sections 81-2001 to 81-2009, and who elect to remain members of the State Employees Retirement System of the State of Nebraska shall continue to participate in the State Employees Retirement System of the State of Nebraska. Carrier enforcement officers shall not receive any expense allowance as provided for by section 81-2002.

(5) The Nebraska State Patrol and the Department of Roads shall have the duty, power, and authority to contract with one another for the staffing and operation of weighing stations and portable scales and the performance of carrier enforcement duties to ensure that there is adequate personnel in the carrier enforcement division to carry out the duties specified in sections 60-1301 to 60-1309. Through June 30, 2005, the number of full-time equivalent positions funded pursuant to such contract shall be limited to eighty-eight officers, including carrier enforcement officers as prescribed in sections 60-1301 to 60-1309 and officers of the Nebraska State Patrol as prescribed in sections 81-2001 to 81-2009 assigned to the carrier enforcement division. Pursuant to such contract, command of the personnel involved in such carrier enforcement operations shall be with the Nebraska State Patrol. The Department of Roads may use any funds at its disposal for its financing of such carrier enforcement activity in accordance with such contract as long as such funds are used only to finance those activities directly involved with the duties specified in sections 60-1301 to 60-1309. The Nebraska State Patrol shall account for all appropriations and expenditures related to the staffing and operation of weighing stations and portable scales and the performance of carrier enforcement duties in a budget program that is distinct and separate from budget programs used for non-carrier-enforcement-division-related activities.

(6) The Nebraska State Patrol may adopt, promulgate, and enforce rules and regulations consistent with statutory provisions related to carrier enforcement necessary for (a) the collection of fees, as outlined in sections 60-3,177 and 60-3,179 to 60-3,182 and the International Fuel Tax Agreement Act, (b) the inspection of licenses and permits required under the motor fuel laws, and (c) weighing and inspection of buses, motor trucks, truck-tractors, semitrailers, trailers, and towed vehicles.

Source: Laws 1955, c. 145, § 3, p. 406; Laws 1978, LB 653, § 21; Laws 1985, LB 395, § 5; Laws 1991, LB 627, § 7; Laws 1994, LB 1066, § 47; Laws 1996, LB 1218, § 15; Laws 2002, LB 470, § 2; Laws 2003, LB 408, § 2; Laws 2004, LB 884, § 32; Laws 2004, LB 983, § 2; Laws 2005, LB 274, § 253; Laws 2007, LB322, § 10.
Operative date July 1, 2007.

Cross Reference

International Fuel Tax Agreement Act, see section 66-1401.

ARTICLE 14

MOTOR VEHICLE INDUSTRY LICENSING

Section.

60-1411.01. Administration and enforcement expenses; how paid; fees; licenses; expiration.

60-1419. Dealer's licenses; bond; conditions.

60-1411.01 Administration and enforcement expenses; how paid; fees; licenses; expiration. (1) Until January 1, 2008, to pay the expenses of the administration, operation,

maintenance, and enforcement of sections 60-1401.01 to 60-1440, the board shall collect with each application for each class of license fees not exceeding the following amounts:

- (a) Motor vehicle dealer's license, two hundred dollars;
- (b) Supplemental motor vehicle dealer's license, ten dollars;
- (c) Motor vehicle or motorcycle salesperson's license, ten dollars;
- (d) Dealer's agent license, fifty dollars;
- (e) Motor vehicle, motorcycle, or trailer manufacturer's license, three hundred dollars;
- (f) Distributor's license, three hundred dollars;
- (g) Factory representative's license, ten dollars;
- (h) Distributor representative's license, ten dollars;
- (i) Finance company's license, two hundred dollars;
- (j) Wrecker or salvage dealer's license, one hundred dollars;
- (k) Factory branch license, one hundred dollars;
- (l) Motorcycle dealer's license, two hundred dollars;
- (m) Motor vehicle auction dealer's license, two hundred dollars; and
- (n) Trailer dealer's license, two hundred dollars.

(2) On and after January 1, 2008, to pay the expenses of the administration, operation, maintenance, and enforcement of sections 60-1401.01 to 60-1440, the board shall collect with each application for each class of license fees not exceeding the following amounts:

- (a) Motor vehicle dealer's license, four hundred dollars;
- (b) Supplemental motor vehicle dealer's license, twenty dollars;
- (c) Motor vehicle or motorcycle salesperson's license, twenty dollars;
- (d) Dealer's agent license, one hundred dollars;
- (e) Motor vehicle, motorcycle, or trailer manufacturer's license, six hundred dollars;
- (f) Distributor's license, six hundred dollars;
- (g) Factory representative's license, twenty dollars;
- (h) Distributor representative's license, twenty dollars;
- (i) Finance company's license, four hundred dollars;
- (j) Wrecker or salvage dealer's license, two hundred dollars;
- (k) Factory branch license, two hundred dollars;
- (l) Motorcycle dealer's license, four hundred dollars;
- (m) Motor vehicle auction dealer's license, four hundred dollars; and
- (n) Trailer dealer's license, four hundred dollars.

(3) The fees shall be fixed by the board and shall not exceed the amount actually necessary to sustain the administration, operation, maintenance, and enforcement of sections 60-1401.01 to 60-1440.

(4) Such licenses, if issued, shall expire on December 31 next following the date of the issuance thereof. Any motor vehicle, motorcycle, or trailer dealer changing its location shall not be required to obtain a new license if the new location is within the same city limits or county, all requirements of law are complied with, and a fee of twenty-five dollars is paid, but any change of ownership of any licensee shall require a new application for a license

and a new license. Change of name of licensee without change of ownership shall require the licensee to obtain a new license and pay a fee of five dollars. Applications shall be made each year for a new or renewal license. If the applicant is an individual, the application shall include the applicant's social security number.

Source: Laws 1971, LB 768, § 11; Laws 1972, LB 1335, § 8; Laws 1974, LB 754, § 9; Laws 1978, LB 248, § 7; Laws 1984, LB 825, § 16; Laws 1997, LB 752, § 147; Laws 1998, LB 903, § 4; Laws 1999, LB 632, § 3; Laws 2003, LB 498, § 7; Laws 2007, LB681, § 1.
Effective date September 1, 2007.

60-1419 Dealer's licenses; bond; conditions. (1) Applicants for a motor vehicle dealer's license, trailer dealer's license, or motorcycle dealer's license shall furnish, at the time of making application, a corporate surety bond in the penal sum of fifty thousand dollars.

(2) Applicants for a motor vehicle auction dealer's license shall, at the time of making application, furnish a corporate surety bond in the penal sum of not less than one hundred thousand dollars. The bond shall be on a form prescribed by the Attorney General of the State of Nebraska and shall be signed by the Nebraska registered agent. The bond shall provide: (a) That the applicant will faithfully perform all the terms and conditions of such license; (b) that the licensed dealer will first fully indemnify any holder of a lien or security interest created pursuant to section 60-164 or article 9, Uniform Commercial Code, whichever applies, in the order of its priority and then any person or other dealer by reason of any loss suffered because of (i) the substitution of any motor vehicle or trailer other than the one selected by the purchaser, (ii) the dealer's failure to deliver to the purchaser a clear and marketable title, (iii) the dealer's misappropriation of any funds belonging to the purchaser, (iv) any alteration on the part of the dealer so as to deceive the purchaser as to the year model of any motor vehicle or trailer, (v) any false and fraudulent representations or deceitful practices whatever in representing any motor vehicle or trailer, (vi) the dealer's failure to remit the proceeds from the sale of any motor vehicle which is subject to a lien or security interest to the holder of such lien or security interest, and (vii) the dealer's failure to pay any person or other dealer for the purchase of a motor vehicle, motorcycle, trailer, or any part or other purchase; and (c) that the motor vehicle, motorcycle, motor vehicle auction, or trailer dealer or wholesaler shall well, truly, and faithfully comply with all the provisions of his or her license and the acts of the Legislature relating to such license. The aggregate liability of the surety shall in no event exceed the penalty of such bond.

Source: Laws 1945, c. 143, § 11, p. 463; Laws 1947, c. 210, § 1, p. 686; Laws 1953, c. 216, § 1, p. 764; R.R.S.1943, § 60-619; Laws 1963, c. 365, § 15, p. 1180; Laws 1967, c. 394, § 11, p. 1238; Laws 1972, LB 1335, § 13; Laws 1974, LB 754, § 15; Laws 1984, LB 825, § 30; Laws 1989, LB 608, § 1; Laws 1999, LB 550, § 41; Laws 1999, LB 632, § 6; Laws 2005, LB 276, § 108; Laws 2007, LB681, § 2.
Effective date September 1, 2007.

ARTICLE 15

DEPARTMENT OF MOTOR VEHICLES

Section.

60-1513. Department of Motor Vehicles Cash Fund; created; use; investment.

60-1513 Department of Motor Vehicles Cash Fund; created; use; investment. The Department of Motor Vehicles Cash Fund is hereby created. The fund shall be administered by the Director of Motor Vehicles. The fund shall be used by the Department of Motor Vehicles to carry out its duties as deemed necessary by the Director of Motor Vehicles, except that transfers from the fund to the General Fund may be made at the direction of the Legislature. Any money in the Department of Motor Vehicles Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1993, LB 491, § 17; Laws 1994, LB 1066, § 48; Laws 1995, LB 467, § 16; Laws 1996, LB 1191, § 1; Laws 2003, LB 209, § 16; Laws 2006, LB 1061, § 9; Laws 2007, LB322, § 11.
Operative date July 1, 2007.

Cross Reference

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

CHAPTER 61

NATURAL RESOURCES

Article.

2. Department of Natural Resources. 61-210 to 61-219.

ARTICLE 2

DEPARTMENT OF NATURAL RESOURCES

Section.

- 61-210. Department of Natural Resources Cash Fund; created; use; investment.
 61-218. Water Resources Cash Fund; created; use; investment; eligibility for funding; annual report; contents.
 61-219. Compliance with interstate compact or decree stipulations; legislative intent.

61-210 Department of Natural Resources Cash Fund; created; use; investment. The Department of Natural Resources Cash Fund is created. The State Treasurer shall credit to such fund such money as is specifically appropriated or reappropriated by the Legislature. The State Treasurer shall also credit such fund with payments, if any, accepted for services rendered by the department and fees collected pursuant to subsection (6) of section 46-606 and section 61-209. The funds made available to the Department of Natural Resources by the United States, through the Natural Resources Conservation Service of the Department of Agriculture or through any other agencies, shall be credited to the fund by the State Treasurer. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The Department of Natural Resources shall allocate money from the fund to pay costs of the programs or activities of the department. The Director of Administrative Services, upon receipt of proper vouchers approved by the department, shall issue warrants on the fund, and the State Treasurer shall countersign and pay from, but never in excess of, the amounts to the credit of the fund.

Source: Laws 1937, c. 8, § 13, p. 109; C.S.Supp.,1941, § 2-1913; R.S.1943, § 2-1547; Laws 1959, c. 6, § 25, p. 90; Laws 1969, c. 584, § 28, p. 2358; Laws 1973, LB 188, § 2; Laws 1987, LB 29, § 2; Laws 1995, LB 7, § 6; Laws 1999, LB 403, § 2; R.S.Supp.,1999, § 2-1547; Laws 2000, LB 900, § 10; Laws 2001, LB 667, § 26; Laws 2002, LB 458, § 8; Laws 2005, LB 335, § 81; Laws 2007, LB701, § 26.
 Effective date May 2, 2007.

Cross Reference

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

61-218 Water Resources Cash Fund; created; use; investment; eligibility for funding; annual report; contents. (1) The Water Resources Cash Fund is created. The fund shall be administered by the Department of Natural Resources. Any money in the fund

available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The State Treasurer shall credit to the fund such money as is (a) transferred to the fund by the Legislature, (b) paid to the state as fees, deposits, payments, and repayments relating to the fund, both principal and interest, (c) donated as gifts, bequests, or other contributions to such fund from public or private entities, (d) made available by any department or agency of the United States if so directed by such department or agency, and (e) credited to the fund from the excise taxes imposed by section 66-1345.01 beginning January 1, 2013.

(3) The fund shall be expended by the department (a) to aid management actions taken to reduce consumptive uses of water in river basins, subbasins, or reaches which are deemed by the department overappropriated pursuant to section 46-713 or fully appropriated pursuant to section 46-714 or are bound by an interstate compact or decree or a formal state contract or agreement and (b) to the extent funds are not expended pursuant to subdivision (a) of this subsection, the department may conduct a statewide assessment of short-term and long-term water management activities and funding needs to meet statutory requirements in sections 46-713 to 46-718 and 46-739 and any requirements of an interstate compact or decree or formal state contract or agreement. The fund shall not be used to pay for administrative expenses or any salaries for the department or any political subdivision.

(4) It is the intent of the Legislature that two million seven hundred thousand dollars be transferred each fiscal year from the General Fund to the Water Resources Cash Fund for FY2009-10 through FY2018-19.

(5)(a) Expenditures from the Water Resources Cash Fund may be made to natural resources districts eligible under subsection (3) of this section for activities to either achieve a sustainable balance of consumptive water uses or assure compliance with an interstate compact or decree or a formal state contract or agreement and shall require a match of local funding in an amount equal to or greater than forty percent of the total cost of carrying out the eligible activity. The department shall, no later than August 1 of each year, beginning in 2007, determine the amount of funding that will be made available to natural resources districts from the Water Resources Cash Fund and notify natural resources districts of this determination. The department shall adopt and promulgate rules and regulations governing application for and use of the Water Resources Cash Fund by natural resources districts. Such rules and regulations shall, at a minimum, include the following components:

(i) Require an explanation of how the planned activity will assure compliance with an interstate compact or decree or a formal state contract or agreement as required by section 46-715 and the controls, rules, and regulations designed to carry out the activity; and

(ii) A schedule of implementation of the activity or its components.

(b) Any natural resources district that fails to implement and enforce its controls, rules, and regulations as required by section 46-715 shall not be eligible for funding from the Water Resources Cash Fund until it is determined by the department that compliance with the provisions required by section 46-715 has been established.

(6) The Department of Natural Resources shall submit an annual report to the Legislature no later than October 1 of each year, beginning in the year 2007, that shall detail the use of the Water Resources Cash Fund in the previous year. The report shall provide:

- (a) Details regarding the use and cost of activities carried out by the department; and
- (b) Details regarding the use and cost of activities carried out by each natural resources district that received funds from the Water Resources Cash Fund.

Source: Laws 2007, LB701, § 25.
Effective date May 2, 2007.

Cross Reference

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

61-219 Compliance with interstate compact or decree stipulations; legislative intent. It is the intent of the Legislature that the Department of Natural Resources may undertake measures in fiscal year 2006-07 to further facilitate compliance with interstate compact or decree stipulations.

Source: Laws 2007, LB701, § 32.
Effective date May 2, 2007.

CHAPTER 64

NOTARIES PUBLIC

Article.

2. Recognition of Acknowledgments. 64-210.

ARTICLE 2

RECOGNITION OF ACKNOWLEDGMENTS

Section.

64-210. Ink stamp seal; contents.

64-210 Ink stamp seal; contents. (1) Each notary public, before performing any duties of his or her office, shall provide himself or herself with an official ink stamp seal on which shall appear the words State of Nebraska, General Notary or State of Nebraska, General Notarial, his or her name as commissioned, and the date of expiration of his or her commission.

(2) A notary public shall authenticate all of his or her official acts with such seal.

(3) A notary public whose commission was issued by the Secretary of State before September 1, 2007, is not required to purchase a new ink stamp seal in order to comply with this section until the notary public's commission expires. Upon renewal, each notary public shall have engraved on his or her official ink stamp seal all of the information required in subsection (1) of this section.

Source: Laws 1969, c. 523, § 10, p. 2144; Laws 1971, LB 88, § 2; Laws 2004, LB 315, § 12; Laws 2007, LB382, § 1.
Effective date September 1, 2007.

CHAPTER 66

OILS, FUELS, AND ENERGY

Article.

4. Motor Vehicle Fuel Tax. 66-489.
7. Motor Fuel Tax Enforcement and Collection. 66-741.
13. Ethanol. 66-1345 to 66-1345.04.
14. International Fuel Tax Agreement Act. 66-1406.02.

ARTICLE 4

MOTOR VEHICLE FUEL TAX

Section.

66-489. Producer, supplier, distributor, wholesaler, or importer; motor fuel tax; excise tax; amount; when payable; exemptions; equalization fee; section, how construed; refund.

66-489 Producer, supplier, distributor, wholesaler, or importer; motor fuel tax; excise tax; amount; when payable; exemptions; equalization fee; section, how construed; refund. (1) At the time of filing the return required by section 66-488, such producer, supplier, distributor, wholesaler, or importer shall, in addition to the tax imposed pursuant to sections 66-4,140, 66-4,145, and 66-4,146 and in addition to the other taxes provided for by law, pay a tax of ten and one-half cents per gallon upon all motor fuels as shown by such return, except that there shall be no tax on the motor fuels reported if (a) the required taxes on the motor fuels have been paid, (b) the motor fuels have been sold to a licensed exporter exclusively for resale or use in another state, (c) the motor fuels have been sold from a Nebraska barge line terminal, pipeline terminal, refinery, or ethanol or biodiesel facility, including motor fuels stored offsite in bulk, by a licensed producer or supplier to a licensed distributor, (d) the motor fuels have been sold by a licensed distributor or licensed importer to a licensed distributor or to a licensed wholesaler and the seller acquired ownership of the motor fuels directly from a licensed producer or supplier at or from a refinery, barge, barge line, pipeline terminal, or ethanol or biodiesel facility, including motor fuels stored offsite in bulk, in this state or was the first importer of such fuel into this state, or (e) as otherwise provided in this section. Such producer, supplier, distributor, wholesaler, or importer shall remit such tax to the department.

(2) As part of filing the return required by section 66-488, each producer of ethanol shall, in addition to other taxes imposed by the motor fuel laws, pay an excise tax of one and one-quarter cents per gallon through December 31, 2004, and commencing January 1, 2010, and two and one-half cents per gallon commencing January 1, 2005, through December 31, 2009, on natural gasoline purchased for use as a denaturant by the producer at an ethanol facility. All taxes, interest, and penalties collected under this subsection shall be remitted to the State Treasurer for credit to the Agricultural Alcohol Fuel Tax Fund, except that

commencing January 1, 2005, through December 31, 2009, one and one-quarter cents per gallon of such excise tax shall be credited to the Ethanol Production Incentive Cash Fund. For fiscal years 2007-08 through 2011-12, if the total receipts from the excise tax authorized in this subsection and designated for deposit in the Agricultural Alcohol Fuel Tax Fund exceed five hundred fifty thousand dollars, the State Treasurer shall deposit amounts in excess of five hundred fifty thousand dollars in the Ethanol Production Incentive Cash Fund.

(3)(a) Motor fuels, methanol, and all blending agents or fuel expanders shall be exempt from the taxes imposed by this section and sections 66-4,105, 66-4,140, 66-4,145, and 66-4,146, when the fuels are used for buses equipped to carry more than seven persons for hire and engaged entirely in the transportation of passengers for hire within municipalities or within a radius of six miles thereof.

(b) The owner or agent of any bus equipped to carry more than seven persons for hire and engaged entirely in the transportation of passengers for hire within municipalities, or within a radius of six miles thereof, in lieu of the excise tax provided for in this section, shall pay an equalization fee of a sum equal to twice the amount of the registration fee applicable to such vehicle under the laws of this state. Such equalization fee shall be paid in the same manner as the registration fee and be disbursed and allocated as registration fees.

(c) Nothing in this section shall be construed as permitting motor fuels to be sold tax exempt. The department shall refund tax paid on motor fuels used in buses deemed exempt by this section.

(4) Natural gasoline purchased for use as a denaturant by a producer at an ethanol facility as defined in section 66-1333 shall be exempt from the motor fuels tax imposed by subsection (1) of this section as well as the tax imposed pursuant to sections 66-4,140, 66-4,145, and 66-4,146.

(5) Unless otherwise provided by an agreement entered into between the State of Nebraska and the governing body of any federally recognized Indian tribe within the State of Nebraska, motor fuels purchased on a Nebraska Indian reservation where the purchaser is a Native American who resides on the reservation shall be exempt from the motor fuels tax imposed by this section as well as the tax imposed pursuant to sections 66-4,140, 66-4,145, and 66-4,146.

(6) Motor fuels purchased for use by the United States Government or its agencies shall be exempt from the motor fuels tax imposed by this section as well as the tax imposed pursuant to sections 66-4,140, 66-4,145, and 66-4,146.

(7) In the case of diesel fuel, there shall be no tax on the motor fuels reported if (a) the diesel fuel has been indelibly dyed and chemically marked in accordance with regulations issued by the Secretary of the Treasury of the United States under 26 U.S.C. 4082 or (b) the diesel fuel contains a concentration of sulphur in excess of five-hundredths percent by weight or fails to meet a cetane index minimum of forty and has been indelibly dyed in accordance with regulations promulgated by the Administrator of the Environmental Protection Agency pursuant to 42 U.S.C. 7545.

Source: Laws 1925, c. 172, § 5, p. 450; Laws 1927, c. 151, § 2, p. 406; Laws 1929, c. 149, § 4, p. 522; Laws 1929, c. 166, § 1, p. 572; C.S.1929, § 66-405; Laws 1931, c. 113, § 1, p. 331; Laws 1933, c. 106, § 4, p. 436; Laws 1933, c. 110, § 3, p. 449; Laws 1935, c. 161, § 1, p. 586; Laws 1935, Spec. Sess., c. 16, § 1, p. 128; Laws 1937, c. 148, § 1, p. 566; Laws 1939, c. 87, § 2, p. 367; Laws 1941, c. 133, § 1, p. 523; C.S.Supp.,1941, § 66-405; Laws 1943, c. 138, § 2(2), p. 474; Laws 1943, c. 141, § 1(2), p. 483; R.S.1943, § 66-410; Laws 1953, c. 225, § 1, p. 792; Laws 1955, c. 247, § 1, p. 780; Laws 1957, c. 282, § 1, p. 1028; Laws 1963, c. 376, § 3, p. 1211; Laws 1965, c. 391, § 1, p. 1249; Laws 1967, c. 397, § 3, p. 1248; Laws 1969, c. 528, § 4, p. 2161; Laws 1969, c. 529, § 1, p. 2167; Laws 1971, LB 776, § 2; Laws 1972, LB 1208, § 1; Laws 1977, LB 139, § 2; Laws 1977, LB 52, § 2; Laws 1979, LB 571, § 3; Laws 1980, LB 722, § 6; Laws 1981, LB 104, § 1; Laws 1981, LB 360, § 4; Laws 1985, LB 346, § 1; Laws 1988, LB 1039, § 3; Laws 1990, LB 1124, § 2; R.S.1943, (1990), § 66-410; Laws 1991, LB 627, § 16; Laws 1994, LB 1160, § 62; Laws 1996, LB 1121, § 3; Laws 2004, LB 983, § 12; Laws 2004, LB 1065, § 1; Laws 2006, LB 1003, § 5; Laws 2007, LB322, § 12. Operative date July 1, 2007.

ARTICLE 7

MOTOR FUEL TAX ENFORCEMENT AND COLLECTION

Section.

66-741. Federally recognized Indian tribe; agreement with state; authorized.

66-741 Federally recognized Indian tribe; agreement with state; authorized. (1)

The Governor or his or her designated representative may negotiate an agreement with the governing body of any federally recognized Indian tribe within the State of Nebraska concerning the collection and dissemination of any motor fuel tax on sales of motor fuel made on a federally recognized Indian reservation or on land held in trust for a Nebraska-based federally recognized Indian tribe. The agreement shall specify:

- (a) Its duration;
- (b) Its purpose;
- (c) Provisions for administering, collecting, and enforcing the agreement;
- (d) Remittance of taxes collected;
- (e) The division of the proceeds of the tax between the parties;
- (f) The method to be employed in accomplishing the partial or complete termination of the agreement; and
- (g) Any other necessary and proper matters.

(2) The agreement shall require that the state motor fuel tax and any tribal motor fuel tax be identical in rate and base of transactions.

(3) An Indian tribe accepting an agreement under this section shall agree not to license or otherwise authorize an individual tribal member or other person or entity to sell motor fuel in violation of the terms of the agreement.

Source: Laws 2001, LB 172, § 11; Laws 2007, LB537, § 1.
Effective date September 1, 2007.

ARTICLE 13

ETHANOL

Section.

- 66-1345. Ethanol Production Incentive Cash Fund; created; use; investment; transfers; duties.
- 66-1345.01. Corn and grain sorghum; excise tax; procedure.
- 66-1345.02. Excise tax; records required; remittance of tax; duties; calculations required by Department of Agriculture; report.
- 66-1345.04. Transfer to Ethanol Production Incentive Cash Fund; legislative intent.

66-1345 Ethanol Production Incentive Cash Fund; created; use; investment; transfers; duties. (1) There is hereby created the Ethanol Production Incentive Cash Fund which shall be used by the board to pay the credits created in section 66-1344 to the extent provided in this section. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The State Treasurer shall transfer to the Ethanol Production Incentive Cash Fund such money as shall be (a) appropriated to the Ethanol Production Incentive Cash Fund by the Legislature, (b) given as gifts, bequests, grants, or other contributions to the Ethanol Production Incentive Cash Fund from public or private sources, (c) made available due to failure to fulfill conditional requirements pursuant to investment agreements entered into prior to April 30, 1992, (d) received as return on investment of the Ethanol Authority and Development Cash Fund, (e) credited to the Ethanol Production Incentive Cash Fund from the excise taxes imposed by section 66-1345.01 through December 31, 2012, and (f) credited to the Ethanol Production Incentive Cash Fund pursuant to sections 66-489, 66-726, 66-1345.04, and 66-1519.

(2) The Department of Revenue shall, at the end of each calendar month, notify the State Treasurer of the amount of motor fuel tax that was not collected in the preceding calendar month due to the credits provided in section 66-1344. The State Treasurer shall transfer from the Ethanol Production Incentive Cash Fund to the Highway Trust Fund an amount equal to such credits less the following amounts:

- (a) For 1993, 1994, and 1995, the amount generated during the calendar quarter by a one-cent tax on motor fuel pursuant to sections 66-489 and 66-6,107;
- (b) For 1996, the amount generated during the calendar quarter by a three-quarters-cent tax on motor fuel pursuant to such sections;
- (c) For 1997, the amount generated during the calendar quarter by a one-half-cent tax on motor fuel pursuant to such sections; and
- (d) For 1998 and each year thereafter, no reduction.

For 1993 through 1997, if the amount generated pursuant to subdivisions (a), (b), and (c) of this subsection and the amount transferred pursuant to subsection (1) of this section are not sufficient to fund the credits provided in section 66-1344, then the credits shall be funded through the Ethanol Production Incentive Cash Fund but shall not be funded through either

the Highway Cash Fund or the Highway Trust Fund. For 1998 and each year thereafter, the credits provided in such section shall be funded through the Ethanol Production Incentive Cash Fund but shall not be funded through either the Highway Cash Fund or the Highway Trust Fund.

If, during any month, the amount of money in the Ethanol Production Incentive Cash Fund is not sufficient to reimburse the Highway Trust Fund for credits earned pursuant to section 66-1344, the Department of Revenue shall suspend the transfer of credits by ethanol producers until such time as additional funds are available in the Ethanol Production Incentive Cash Fund for transfer to the Highway Trust Fund. Thereafter, the Department of Revenue shall, at the end of each month, allow transfer of accumulated credits earned by each ethanol producer on a prorated basis derived by dividing the amount in the fund by the aggregate amount of accumulated credits earned by all ethanol producers.

(3) The State Treasurer shall transfer from the Ethanol Production Incentive Cash Fund to the Management Services Expense Revolving Fund the amount reported under subsection (4) of section 66-1345.02 for each calendar month of the fiscal year as provided in such subsection.

(4) On December 31, 2012, the State Treasurer shall transfer the unexpended and unobligated funds, including all subsequent investment interest, from the Ethanol Production Incentive Cash Fund to the Water Resources Cash Fund.

(5) Whenever the unobligated balance in the Ethanol Production Incentive Cash Fund exceeds twenty million dollars, the Department of Revenue shall notify the Department of Agriculture at which time the Department of Agriculture shall suspend collection of the excise tax levied pursuant to section 66-1345.01. If, after suspension of the collection of such excise tax, the balance of the fund falls below ten million dollars, the Department of Revenue shall notify the Department of Agriculture which shall resume collection of the excise tax.

(6) On or before December 1, 2003, and each December 1 thereafter, the Department of Revenue and the Nebraska Ethanol Board shall jointly submit a report to the Legislature which shall project the anticipated revenue and expenditures from the Ethanol Production Incentive Cash Fund through the termination of the ethanol production incentive programs pursuant to section 66-1344. The initial report shall include a projection of the amount of ethanol production for which the Department of Revenue has entered agreements to provide ethanol production credits pursuant to section 66-1344.01 and any additional ethanol production which the Department of Revenue and the Nebraska Ethanol Board reasonably anticipate may qualify for credits pursuant to section 66-1344.

Source: Laws 1992, LB 754, § 9; R.S.Supp., 1992, § 66-1327; Laws 1993, LB 364, § 16; Laws 1994, LB 961, § 2; Laws 1994, LB 1066, § 55; Laws 1994, LB 1160, § 114; Laws 1995, LB 182, § 62; Laws 1995, LB 377, § 8; Laws 1999, LB 605, § 2; Laws 2001, LB 329, § 13; Laws 2001, LB 536, § 3; Laws 2004, LB 479, § 7; Laws 2004, LB 983, § 59; Laws 2004, LB 1065, § 7; Laws 2007, LB322, § 13; Laws 2007, LB701, § 27.

Note: The changes made by LB 701 became effective May 2, 2007. The changes made by LB 322 became operative July 1, 2007.

Cross Reference

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

66-1345.01 Corn and grain sorghum; excise tax; procedure. An excise tax is levied upon all corn and grain sorghum sold through commercial channels in Nebraska or delivered in Nebraska. For any sale or delivery of corn or grain sorghum occurring on or after July 1, 1995, and before January 1, 2000, the tax is three-fourths cent per bushel for corn and three-fourths cent per hundredweight for grain sorghum. For any sale or delivery of corn or grain sorghum occurring on or after January 1, 2000, and before January 1, 2001, the tax is one-half cent per bushel for corn and one-half cent per hundredweight for grain sorghum. For any sale or delivery of corn or grain sorghum occurring on or after October 1, 2001, and before October 1, 2004, the tax is one-half cent per bushel for corn and one-half cent per hundredweight for grain sorghum. For any sale or delivery of corn or grain sorghum occurring on or after October 1, 2004, and before October 1, 2005, the tax is three-fourths cent per bushel for corn and three-fourths cent per hundredweight for grain sorghum. For any sale or delivery of corn or grain sorghum occurring on or after October 1, 2005, and before October 1, 2012, the tax is seven-eighths cent per bushel for corn and seven-eighths cent per hundredweight for grain sorghum. For any sale or delivery of corn or grain sorghum occurring on or after October 1, 2012, and before October 1, 2019, the tax is three-fifths cent per bushel for corn and three-fifths cent per hundredweight for grain sorghum. The tax shall be in addition to any fee imposed pursuant to sections 2-3623 and 2-4012.

The excise tax shall be imposed at the time of sale or delivery and shall be collected by the first purchaser. The tax shall be collected, administered, and enforced in conjunction with the fees imposed pursuant to sections 2-3623 and 2-4012. The tax shall be collected, administered, and enforced by the Department of Agriculture. No corn or grain sorghum shall be subject to the tax imposed by this section more than once.

In the case of a pledge or mortgage of corn or grain sorghum as security for a loan under the federal price support program, the excise tax shall be deducted from the proceeds of such loan at the time the loan is made. If, within the life of the loan plus thirty days after the collection of the excise tax for corn or grain sorghum that is mortgaged as security for a loan under the federal price support program, the grower of the corn or grain sorghum so mortgaged decides to purchase the corn or grain sorghum and use it as feed, the grower shall be entitled to a refund of the excise tax previously paid. The refund shall be payable by the department upon the grower's written application for a refund. The application shall have attached proof of the tax deducted.

The excise tax shall be deducted whether the corn or grain sorghum is stored in this or any other state. The excise tax shall not apply to the sale of corn or grain sorghum to the federal government for ultimate use or consumption by the people of the United States when the State of Nebraska is prohibited from imposing such tax by the Constitution of the United States and laws enacted pursuant thereto.

Source: Laws 1995, LB 377, § 2; Laws 1996, LB 1336, § 7; Laws 1999, LB 605, § 3; Laws 2001, LB 536, § 4; Laws 2004, LB 479, § 8; Laws 2004, LB 1065, § 8; Laws 2005, LB 90, § 18; Laws 2007, LB322, § 14; Laws 2007, LB701, § 28.

Note: The changes made by LB 701 became effective May 2, 2007. The changes made by LB 322 became operative July 1, 2007.

66-1345.02 Excise tax; records required; remittance of tax; duties; calculations required by Department of Agriculture; report. (1) The first purchaser, at the time of sale or delivery, shall retain the excise tax as provided in section 66-1345.01 and shall maintain the necessary records of the excise tax for each sale or delivery of corn or grain sorghum. Records maintained by the first purchaser shall provide (a) the name and address of the seller or deliverer, (b) the date of the sale or delivery, (c) the number of bushels of corn or hundredweight of grain sorghum sold or delivered, and (d) the amount of excise tax retained on each sale or delivery. The records shall be open for inspection and audit by authorized representatives of the Department of Agriculture during normal business hours observed by the first purchaser.

(2) The first purchaser shall render and have on file with the department by the last day of each January, April, July, and October on forms prescribed by the department a statement of the number of bushels of corn and hundredweight of grain sorghum sold or delivered in Nebraska. At the time the statement is filed, the first purchaser shall pay and remit to the department the excise tax.

(3) The department shall remit the excise tax collected to the State Treasurer for credit to the Ethanol Production Incentive Cash Fund within thirty days after the end of each quarter through December 31, 2012. Beginning January 1, 2013, the department shall remit the excise tax collected to the State Treasurer for credit to the Water Resources Cash Fund within thirty days after the end of each quarter.

(4) The department shall calculate its costs in collecting and enforcing the excise tax imposed by section 66-1345.01 and shall report such costs to the budget division of the Department of Administrative Services within thirty days after the end of the fiscal year. Sufficient funds to cover such costs shall be transferred from the Ethanol Production Incentive Cash Fund to the Management Services Expense Revolving Fund at the end of each calendar month, with such transfers ending December 31, 2012. Beginning January 1, 2013, the Department of Agriculture shall calculate its costs in collecting and enforcing the excise tax imposed by section 66-1345.01 and shall report such costs to the budget division of the Department of Administrative Services within thirty days after the end of the fiscal year. Sufficient funds to cover such costs shall be transferred from the Water Resources Cash Fund to the Management Services Expense Revolving Fund at the end of each calendar month. Funds shall be transferred upon the receipt of a report of costs incurred by the Department of Agriculture for the previous calendar month by the budget division of the Department of Administrative Services.

Source: Laws 1995, LB 377, § 3; Laws 1999, LB 605, § 4; Laws 2001, LB 536, § 5; Laws 2007, LB322, § 15; Laws 2007, LB701, § 29.

Note: The changes made by LB 701 became effective May 2, 2007. The changes made by LB 322 became operative July 1, 2007.

66-1345.04 Transfer to Ethanol Production Incentive Cash Fund; legislative intent. (1) The State Treasurer shall transfer from the General Fund to the Ethanol Production Incentive Cash Fund, on or before the end of each of fiscal years 1995-96 and 1996-97, \$8,000,000 per fiscal year.

(2) It is the intent of the Legislature that the following General Fund amounts be appropriated to the Ethanol Production Incentive Cash Fund in each of the following years:

- (a) For each of fiscal years 1997-98 and 1998-99, \$7,000,000 per fiscal year;
- (b) For fiscal year 1999-2000, \$6,000,000;
- (c) For fiscal year 2000-01, \$5,000,000;
- (d) For fiscal year 2001-02 and for each of fiscal years 2003-04 through 2006-07, \$1,500,000;
- (e) For each of fiscal years 2005-06 and 2006-07, \$2,500,000 in addition to the amount in subdivision (2)(d) of this section;
- (f) For fiscal year 2007-08, \$5,500,000;
- (g) For each of fiscal years 2008-09 through 2011-12, \$2,500,000;
- (h) For each of fiscal years 2005-06 and 2006-07, \$5,000,000 in addition to the other amounts in this section; and
- (i) For fiscal year 2007-08, \$15,500,000 in addition to the other amounts in this section.

Source: Laws 1995, LB 377, § 4; Laws 1999, LB 605, § 5; Laws 2001, LB 536, § 6; Laws 2002, Second Spec. Sess., LB 1, § 3; Laws 2005, LB 90, § 19; Laws 2006, LB 968, § 1; Laws 2007, LB322, § 16. Operative date July 1, 2007.

ARTICLE 14

INTERNATIONAL FUEL TAX AGREEMENT ACT

Section.

66-1406.02. License; director; powers.

66-1406.02 License; director; powers. (1) The director may suspend, revoke, cancel, or refuse to issue or renew a license under the International Fuel Tax Agreement Act:

- (a) If the applicant's or licensee's registration certificate issued pursuant to the International Registration Plan Act has been suspended, revoked, or canceled or the director refused to issue or renew such certificate;
- (b) If the applicant or licensee is in violation of sections 75-348 to 75-358 or 75-392 to 75-399;
- (c) If the applicant's or licensee's security has been canceled;
- (d) If the applicant or licensee failed to provide additional security as required;

(e) If the applicant or licensee failed to file any report or return required by the motor fuel laws, filed an incomplete report or return required by the motor fuel laws, did not file any report or return required by the motor fuel laws electronically, or did not file a report or return required by the motor fuel laws on time;

(f) If the applicant or licensee failed to pay taxes required by the motor fuel laws due within the time provided;

(g) If the applicant or licensee filed any false report, return, statement, or affidavit, required by the motor fuel laws, knowing it to be false;

(h) If the applicant or licensee would no longer be eligible to obtain a license; or

(i) If the applicant or licensee committed any other violation of the International Fuel Tax Agreement Act or the rules and regulations adopted and promulgated under the act.

(2) Prior to taking any action pursuant to subsection (1) of this section, the director shall notify and advise the applicant or licensee of the proposed action and the reasons for such action in writing, by registered or certified mail, to his or her last-known business address as shown on the application or license. The notice shall also include an advisement of the procedures in subsection (3) of this section.

(3) The applicant or licensee may, within thirty days after the mailing of the notice, petition the director in writing for a hearing to contest the proposed action. The hearing shall be commenced in accordance with the rules and regulations adopted and promulgated by the Department of Motor Vehicles. If a petition is filed, the director shall, within twenty days after receipt of the petition, set a hearing date at which the applicant or licensee may show cause why the proposed action should not be taken. The director shall give the applicant or licensee reasonable notice of the time and place of the hearing. If the director's decision is adverse to the applicant or licensee, the applicant or licensee may appeal the decision in accordance with the Administrative Procedure Act.

(4) Except as provided in subsection (2) of section 60-3,205 and subsection (8) of this section, the filing of the petition shall stay any action by the director until a hearing is held and a final decision and order is issued.

(5) Except as provided in subsection (2) of section 60-3,205 and subsection (8) of this section, if no petition is filed at the expiration of thirty days after the date on which the notification was mailed, the director may take the proposed action described in the notice.

(6) Except as provided in subsection (2) of section 60-3,205 and subsection (8) of this section, if, in the judgment of the director, the applicant or licensee has complied with or is no longer in violation of the provisions for which the director took action under this section, the director may reinstate the license without delay. An applicant for reinstatement, issuance, or renewal of a license within three years after the date of suspension, revocation, cancellation, or refusal to issue or renew shall submit a fee of one hundred dollars to the director. The director shall remit the fee to the State Treasurer for credit to the Highway Cash Fund.

(7) Suspension of, revocation of, cancellation of, or refusal to issue or renew a license by the director shall not relieve any person from making or filing the reports or returns required by the motor fuel laws in the manner or within the time required.

(8) Any person who receives notice from the director of action taken pursuant to subsection (1) of this section shall, within three business days, return such registration certificate and license plates issued pursuant to section 60-3,198 to the department. If any person fails to return the registration certificate and license plates to the department, the department shall notify the Nebraska State Patrol that any such person is in violation of this section.

Source: Laws 1998, LB 1056, § 5; Laws 2003, LB 563, § 38; Laws 2006, LB 853, § 22; Laws 2007, LB358, § 11.
Effective date September 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

International Registration Plan Act, see section 60-349.

CHAPTER 68

PAUPERS AND PUBLIC ASSISTANCE

Article.

1. Miscellaneous Provisions. 68-104 to 68-130.
3. State Assistance Fund. 68-309 to 68-313.
7. Department Duties. 68-703.01 to 68-718.
9. Medical Assistance Act. 68-906 to 68-949.
10. Assistance, Generally.
 - (a) Assistance to the Aged, Blind, or Disabled. 68-1001.01 to 68-1014.
 - (b) Procedure and Penalties. 68-1015 to 68-1017.
 - (l) Long-Term Care Partnership Program. 68-1095.01.
11. Department on Aging Advisory Committee. 68-1101 to 68-1105.
12. Social Services. 68-1204 to 68-1210.
14. Genetically Handicapped Persons. 68-1402 to 68-1405.
15. Disabled Persons and Family Support.
 - (a) Disabled Persons and Family Support Act. 68-1503, 68-1514.
 - (b) Nebraska Lifespan Respite Services Program. 68-1521 to 68-1523.
17. Welfare Reform.
 - (a) Welfare Reform Act. 68-1709 to 68-1732.
18. ICF/MR Reimbursement Protection Act. 68-1802 to 68-1807.

ARTICLE 1

MISCELLANEOUS PROVISIONS

Section.

- 68-104. Department of Health and Human Services; overseer of poor; county board; assistance; powers and duties.
- 68-126. Health services; maximum payments; rules and regulations; standard of need for medical services; established.
- 68-129. Public assistance; computation of available resources; exclusions.
- 68-130. Counties; maintain office and service facilities.

68-104 Department of Health and Human Services; overseer of poor; county board; assistance; powers and duties. The Department of Health and Human Services shall be the overseer of the poor and shall be vested with the entire and exclusive superintendence of the poor in this state, except that the county board of each county shall furnish such medical service as may be required for the poor of the county who are not eligible for other medical assistance programs and general assistance for the poor of the county. Any person who is or becomes ineligible for other medical assistance programs due to his or her own actions or inactions shall also be ineligible for medical services from the county.

The county board of each county shall administer the medical assistance provided pursuant to this section. A county board may enter into an agreement with the Department of Health and Human Services which allows the department to aid in the administration of such medical assistance program. In providing medical and hospital care for the poor, the county board shall make use of any existing facilities, including tax-supported hospitals and charitable clinics so far as the same may be available, and shall use the financial eligibility criteria established for the standard of need developed by the county pursuant to section 68-126.

A county board may transfer funds designated for public assistance to the Department of Health and Human Services for purposes of payments to providers who serve eligible recipients of medical assistance or low-income uninsured persons and meet federal and state disproportionate-share payment requirements pursuant to subdivision (2)(c) of section 68-910.

Source: R.S.1866, c. 40, § 4, p. 275; Laws 1875, § 1, p. 89; R.S.1913, § 5798; Laws 1915, c. 20, § 1, p. 80; Laws 1919, c. 128, § 1, p. 302; C.S.1922, § 5143; C.S.1929, § 68-104; Laws 1937, c. 150, § 1, p. 574; C.S.Supp.,1941, § 68-104; R.S.1943, § 68-104; Laws 1947, c. 218, § 1, p. 705; Laws 1982, LB 522, § 20; Laws 1982, LB 602, § 1; Laws 1983, LB 604, § 19; Laws 1984, LB 886, § 1; Laws 1995, LB 455, § 3; Laws 1996, LB 1044, § 285; Laws 2006, LB 1248, § 67; Laws 2007, LB292, § 1. Effective date September 1, 2007.

Cross Reference

For powers of health district in counties over 200,000 population, see section 71-1623.

General assistance, see sections 68-131 to 68-148.

Health services, maximum payments and standards established, see section 68-126.

Township counties, county board has charge of care of the poor, see section 23-248.

68-126 Health services; maximum payments; rules and regulations; standard of need for medical services; established. The Department of Health and Human Services shall adopt and promulgate rules and regulations establishing maximum payments for all health services furnished to recipients of public assistance. Each county shall, not later than December 31, 1984, establish a standard of need for medical services furnished, pursuant to section 68-104, by the counties to indigent persons who are not eligible for other medical assistance programs. This standard shall not exceed the Office of Management and Budget income poverty guidelines.

Source: Laws 1963, c. 384, § 1, p. 1229; Laws 1982, LB 522, § 25; Laws 1982, LB 602, § 4; Laws 1984, LB 886, § 2; Laws 1996, LB 1044, § 286; Laws 2007, LB296, § 236. Operative date July 1, 2007.

68-129 Public assistance; computation of available resources; exclusions. The Department of Health and Human Services shall, by rule and regulation, when determining need for public assistance on the basis of available resources, exclude from the definition of available resources of an applicant for assistance either the funds deposited in an irrevocable trust fund created pursuant to section 12-1106 or up to four thousand dollars, increased annually as provided in this section, of the amount paid for a policy of insurance the proceeds of which are specifically and irrevocably designated, assigned, or pledged for the payment of

the applicant's burial expenses. The Department of Health and Human Services shall increase such amount annually on September 1 beginning with the year 2006 by the percentage change in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics at the close of the twelve-month period ending on August 31 of such year. This section shall not preclude the eligibility for assistance of an applicant who has purchased such a policy of insurance prior to July 9, 1988, unless such applicant is subject to subdivision (3) of section 68-1002.

Source: Laws 1982, LB 314, § 1; Laws 1986, LB 643, § 22; Laws 1988, LB 1010, § 1; Laws 1996, LB 1044, § 288; Laws 2006, LB 85, § 2; Laws 2007, LB296, § 237.
Operative date July 1, 2007.

68-130 Counties; maintain office and service facilities. Counties shall maintain, at no additional cost to the Department of Health and Human Services, office and service facilities used for the administration of the public assistance programs as such facilities existed on April 1, 1983.

Source: Laws 1982, LB 604, § 5; Laws 1983, LB 604, § 21; Laws 1996, LB 1044, § 289; Laws 2007, LB296, § 238.
Operative date July 1, 2007.

ARTICLE 3

STATE ASSISTANCE FUND

Section.

- 68-309. Department of Health and Human Services; sole state agency for administration of welfare programs.
- 68-312. Department of Health and Human Services; rules and regulations; records and other communications; use by other agency or department.
- 68-313. Records and information; use and disclosure; limitations.

68-309 Department of Health and Human Services; sole state agency for administration of welfare programs. The Department of Health and Human Services shall be the sole agency of the State of Nebraska to administer the State Assistance Fund for assistance to the aged, blind, or disabled, aid to dependent children, medical assistance, medically handicapped children's services, child welfare services, and such other assistance and services as may be made available to the State of Nebraska by the government of the United States.

Source: Laws 1935, Spec. Sess., c. 20, § 7, p. 136; C.S.Supp.,1941, § 68-323; R.S.1943, § 68-309; Laws 1951, c. 216, § 1, p. 780; Laws 1963, c. 388, § 2, p. 1238; Laws 1965, c. 399, § 2, p. 1280; Laws 1982, LB 522, § 28; Laws 1985, LB 249, § 2; Laws 1996, LB 1044, § 294; Laws 2007, LB296, § 239.
Operative date July 1, 2007.

68-312 Department of Health and Human Services; rules and regulations; records and other communications; use by other agency or department. The Department of Health and Human Services has the power to establish and enforce reasonable rules and

regulations governing the custody, use, and preservation of the records, papers, files, and communications of the state. The use of such records, papers, files, and communications by any other agency or department of government to which they may be furnished shall be limited to the purposes for which they are furnished.

Source: Laws 1941, c. 174, § 3, p. 684; C.S.Supp.,1941, § 68-340; R.S.1943, § 68-312; Laws 1982, LB 522, § 29; Laws 1996, LB 1044, § 295; Laws 2007, LB296, § 240.
Operative date July 1, 2007.

68-313 Records and information; use and disclosure; limitations. It shall be unlawful, except as permitted by section 68-313.01 and except for purposes directly connected with the administration of general assistance, medically handicapped children's services, medical assistance, assistance to the aged, blind, or disabled, or aid to dependent children, and in accordance with the rules and regulations of the Department of Health and Human Services, for any person or persons to solicit, disclose, receive, make use of, authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or names of, any information concerning, or persons applying for or receiving such aid or assistance, directly or indirectly derived from the records, papers, files, or communications of the state, or subdivisions or agencies thereof, or acquired in the course of the performance of official duties.

Source: Laws 1941, c. 174, § 3, p. 684; C.S.Supp.,1941, § 68-340; R.S.1943, § 68-313; Laws 1953, c. 234, § 1(1), p. 813; Laws 1982, LB 522, § 30; Laws 1985, LB 249, § 3; Laws 1996, LB 1044, § 296; Laws 2007, LB296, § 241.
Operative date July 1, 2007.

ARTICLE 7

DEPARTMENT DUTIES

Section.

- 68-703.01. Department of Health and Human Services; federal funds; expenditures; authorized.
- 68-716. Department of Health and Human Services; medical assistance; right of subrogation.
- 68-717. Department of Health and Human Services; assume responsibility for public assistance programs.
- 68-718. Furniture, property, personnel; transferred to Department of Health and Human Services; personnel, how treated.

68-703.01 Department of Health and Human Services; federal funds; expenditures; authorized. The Department of Health and Human Services has the authority to use any funds which may be made available through an agency of the government of the United States to reimburse any county of this state, either in whole or in part, for the following expenditures: (1) Employment of staff whose duties involve the giving or strengthening of services to children, (2) the return of any nonresident child to his or her place of residence when such child shall be found in the county, and (3) the temporary cost of board and care of a needy child who by necessity requires care in a foster home.

Source: Laws 1959, c. 312, § 1, p. 1152; Laws 1961, c. 415, § 16, p. 1254; Laws 1996, LB 1044, § 298; Laws 2007, LB296, § 242.
Operative date July 1, 2007.

68-716 Department of Health and Human Services; medical assistance; right of subrogation. An application for medical assistance shall give a right of subrogation to the Department of Health and Human Services or its assigns. Subject to sections 68-921 to 68-925, subrogation shall include every claim or right which the applicant may have against a third party when such right or claim involves money for medical care. The third party shall be liable to make payments directly to the department or its assigns as soon as he or she is notified in writing of the valid claim for subrogation under this section.

Source: Laws 1976, LB 239, § 1; Laws 1982, LB 522, § 35; Laws 1988, LB 419, § 14; Laws 1989, LB 362, § 7; Laws 1996, LB 1044, § 300; Laws 1996, LB 1155, § 22; Laws 2006, LB 1248, § 69; Laws 2007, LB296, § 243.
Operative date July 1, 2007.

68-717 Department of Health and Human Services; assume responsibility for public assistance programs. The Department of Health and Human Services shall assume the responsibility for all public assistance, including aid to families with dependent children, emergency assistance, assistance to the aged, blind, or disabled, medically handicapped children's services, commodities, food stamps, and medical assistance.

Source: Laws 1982, LB 522, § 33; Laws 1983, LB 604, § 23; Laws 1985, LB 249, § 4; Laws 1989, LB 362, § 8; Laws 1996, LB 1044, § 301; Laws 2007, LB296, § 244.
Operative date July 1, 2007.

68-718 Furniture, property, personnel; transferred to Department of Health and Human Services; personnel, how treated. All furniture, equipment, books, files, records, and personnel utilized by the county divisions or boards of public welfare for the administration of public assistance programs shall be transferred and delivered to the Department of Health and Human Services. The transferred employees shall not lose any accrued benefits or status due to the transfer and shall receive the same benefits as other state employees, including participation in the State Employees Retirement Fund.

Source: Laws 1982, LB 522, § 34; Laws 1996, LB 1044, § 302; Laws 2007, LB296, § 245.
Operative date July 1, 2007.

ARTICLE 9

MEDICAL ASSISTANCE ACT

Section.

- 68-906. Medical assistance; state accepts federal provisions.
- 68-907. Terms, defined.
- 68-908. Department; powers and duties.
- 68-913. Medical assistance program; public awareness; public school district; hospital; duties.

- 68-915. Eligibility.
- 68-919. Medical assistance recipient; liability; when; claim; procedure; department; powers.
- 68-921. Entitlement of spouse; terms, defined.
- 68-922. Amount of entitlement; department; rules and regulations.
- 68-923. Assets; eligibility for assistance; future medical support; considerations; subrogation.
- 68-924. Designation of assets; procedure.
- 68-925. Department; furnish statement.
- 68-926. Legislative findings.
- 68-927. Terms, defined.
- 68-928. Licensed insurer or self-funded insurer; provide coverage information.
- 68-930. Self-funded insurer; violation; civil penalty.
- 68-931. Recovery; authorized.
- 68-932. Process for resolving violations; appeal.
- 68-940. Penalties or damages; considerations; liability; costs and attorney's fees.
- 68-948. Medicaid Reform Council; established; members; duties; expenses; termination.
- 68-949. Medical assistance program; legislative intent; department; duties; reports.

68-906 Medical assistance; state accepts federal provisions. For purposes of paying medical assistance under the Medical Assistance Act and sections 68-1002 and 68-1006, the State of Nebraska accepts and assents to all applicable provisions of Title XIX and Title XXI of the federal Social Security Act. Any reference in the Medical Assistance Act to the federal Social Security Act or other acts or sections of federal law shall be to such federal acts or sections as they existed on April 1, 2007.

Source: Laws 1965, c. 397, § 6, p. 1278; Laws 1993, LB 808, § 2; Laws 1996, LB 1044, § 324; Laws 1998, LB 1063, § 7; Laws 2000, LB 1115, § 10; Laws 2005, LB 301, § 4; R.S.Supp., 2005, § 68-1021; Laws 2006, LB 1248, § 6; Laws 2007, LB185, § 1.
Operative date March 15, 2007.

68-907 Terms, defined. For purposes of the Medical Assistance Act:

- (1) Committee means the Health and Human Services Committee of the Legislature;
- (2) Department means the Department of Health and Human Services;
- (3) Medicaid Reform Plan means the Medicaid Reform Plan submitted on December 1, 2005, pursuant to the Medicaid Reform Act enacted pursuant to Laws 2005, LB 709;
- (4) Medicaid state plan means the comprehensive written document, developed and amended by the department and approved by the federal Centers for Medicare and Medicaid Services, which describes the nature and scope of the medical assistance program and provides assurances that the department will administer the program in compliance with federal requirements;
- (5) Provider means a person providing health care or related services under the medical assistance program; and

(6) Waiver means the waiver of applicability to the state of one or more provisions of federal law relating to the medical assistance program based on an application by the department and approval of such application by the federal Centers for Medicare and Medicaid Services.

Source: Laws 2006, LB 1248, § 7; Laws 2007, LB296, § 246.
Operative date July 1, 2007.

68-908 Department; powers and duties. (1) The department shall administer the medical assistance program.

(2) The department may (a) enter into contracts and interagency agreements, (b) adopt and promulgate rules and regulations, (c) adopt fee schedules, (d) apply for and implement waivers and managed care plans for eligible recipients, and (e) perform such other activities as necessary and appropriate to carry out its duties under the Medical Assistance Act.

(3) The department shall maintain the confidentiality of information regarding applicants for or recipients of medical assistance and such information shall only be used for purposes related to administration of the medical assistance program and the provision of such assistance or as otherwise permitted by federal law.

(4)(a) The department shall prepare a biennial summary and analysis of the medical assistance program for legislative and public review, including, but not limited to, a description of eligible recipients, covered services, provider reimbursement, program trends and projections, program budget and expenditures, the status of implementation of the Medicaid Reform Plan, and recommendations for program changes.

(b) The department shall provide a draft report of such summary and analysis to the Medicaid Reform Council no later than October 1 of each even-numbered year. The council shall conduct a public meeting no later than October 15 of such year to discuss and receive public comment regarding such report. The council shall provide any comments and recommendations regarding such report in writing to the department and the committee no later than November 1 of such year. The department shall submit a final report of such summary and analysis to the Governor, the Legislature, and the council no later than December 1 of such year.

Source: Laws 1965, c. 397, § 8, p. 1278; Laws 1967, c. 413, § 2, p. 1278; Laws 1982, LB 522, § 43; Laws 1996, LB 1044, § 325; R.S.1943, (2003), § 68-1023; Laws 2006, LB 1248, § 8; Laws 2007, LB296, § 247.
Operative date July 1, 2007.

68-913 Medical assistance program; public awareness; public school district; hospital; duties. (1) Each public school district shall annually, at the beginning of the school year, provide written information supplied by the department to every student describing the availability of children's health services provided under the medical assistance program.

(2) Each hospital shall provide the mother of every child born in such hospital, at the time of such birth, written information provided by the department describing the availability of children's health services provided under the medical assistance program.

(3) The department shall develop and implement other activities designed to increase public awareness of the availability of children's health services provided under the medical

assistance program. Such activities shall include materials and efforts designed to increase participation in the program by minority populations.

Source: Laws 1998, LB 1063, § 10; R.S.1943, (2003), § 68-1025.01; Laws 2006, LB 1248, § 13; Laws 2007, LB296, § 248.
Operative date July 1, 2007.

68-915 Eligibility. The following persons shall be eligible for medical assistance:

- (1) Dependent children as defined in section 43-504;
- (2) Aged, blind, and disabled persons as defined in sections 68-1002 to 68-1005;
- (3) Children under nineteen years of age who are eligible under section 1905(a)(i) of the federal Social Security Act;
- (4) Persons who are presumptively eligible as allowed under sections 1920 and 1920B of the federal Social Security Act;
- (5) Children under nineteen years of age and pregnant women with a family income equal to or less than one hundred eighty-five percent of the Office of Management and Budget income poverty guideline, as allowed under Title XIX and Title XXI of the federal Social Security Act, without regard to resources. Children described in this subdivision and subdivision (6) of this section shall remain eligible for six consecutive months from the date of initial eligibility prior to redetermination of eligibility. The department may review eligibility monthly thereafter pursuant to rules and regulations adopted and promulgated by the department. The department may determine upon such review that a child is ineligible for medical assistance if such child no longer meets eligibility standards established by the department;
- (6) For purposes of Title XIX of the federal Social Security Act as provided in subdivision (5) of this section, children with a family income as follows:
 - (a) Equal to or less than one hundred fifty percent of the Office of Management and Budget income poverty guideline with eligible children one year of age or younger;
 - (b) Equal to or less than one hundred thirty-three percent of the Office of Management and Budget income poverty guideline with eligible children over one year of age and under six years of age; or
 - (c) Equal to or less than one hundred percent of the Office of Management and Budget income poverty guideline with eligible children six years of age or older and less than nineteen years of age;
- (7) Persons who are medically needy caretaker relatives as allowed under 42 U.S.C. 1396d(a)(ii);
- (8) As allowed under 42 U.S.C. 1396a(a)(10)(A)(ii), disabled persons as defined in section 68-1005 with a family income of less than two hundred fifty percent of the Office of Management and Budget income poverty guideline and who, but for earnings in excess of the limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be receiving federal Supplemental Security Income. The department shall apply for a waiver to disregard any unearned income that is contingent upon a trial work period in applying the Supplemental

Security Income standard. Such disabled persons shall be subject to payment of premiums as a percentage of family income beginning at not less than two hundred percent of the Office of Management and Budget income poverty guideline. Such premiums shall be graduated based on family income and shall not be less than two percent or more than ten percent of family income; and

(9) As allowed under 42 U.S.C. 1396a(a)(10)(A)(ii), persons who:

(a) Have been screened for breast and cervical cancer under the Centers for Disease Control and Prevention breast and cervical cancer early detection program established under Title XV of the federal Public Health Service Act, 42 U.S.C. 300k et seq., in accordance with the requirements of section 1504 of such act, 42 U.S.C. 300n, and who need treatment for breast or cervical cancer, including precancerous and cancerous conditions of the breast or cervix;

(b) Are not otherwise covered under creditable coverage as defined in section 2701(c) of the federal Public Health Service Act, 42 U.S.C. 300gg(c);

(c) Have not attained sixty-five years of age; and

(d) Are not eligible for medical assistance under any mandatory categorically needy eligibility group.

Eligibility shall be determined under this section using an income budgetary methodology that determines children's eligibility at no greater than one hundred eighty-five percent of the Office of Management and Budget income poverty guideline and adult eligibility using adult income standards no greater than the applicable categorical eligibility standards established pursuant to state or federal law. The department shall determine eligibility under this section pursuant to such income budgetary methodology and subdivision (1)(q) of section 68-1713.

Source: Laws 1965, c. 397, § 5, p. 1278; Laws 1984, LB 1127, § 4; Laws 1988, LB 229, § 1; Laws 1995, LB 455, § 6; Laws 1996, LB 1044, § 323; Laws 1998, LB 1063, § 6; Laws 1999, LB 594, § 34; Laws 2001, LB 677, § 1; Laws 2002, Second Spec. Sess., LB 8, § 2; Laws 2003, LB 411, § 2; Laws 2005, LB 301, § 3; R.S.Supp.,2005, § 68-1020; Laws 2006, LB 1248, § 15; Laws 2007, LB296, § 249; Laws 2007, LB351, § 3.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 249, with LB 351, section 3, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 351 became effective September 1, 2007.

68-919 Medical assistance recipient; liability; when; claim; procedure; department; powers. (1) The recipient of medical assistance under the medical assistance program shall be indebted to the department for the total amount paid for medical assistance on behalf of the recipient if:

(a) The recipient was fifty-five years of age or older at the time the medical assistance was provided; or

(b) The recipient resided in a medical institution and, at the time of institutionalization or application for medical assistance, whichever is later, the department determines that the recipient could not have reasonably been expected to be discharged and resume living at home. For purposes of this section, medical institution means a nursing facility, an intermediate care facility for the mentally retarded, or an inpatient hospital.

(2) The debt accruing under subsection (1) of this section arises during the life of the recipient but shall be held in abeyance until the death of the recipient. Any such debt to the department that exists when the recipient dies shall be recovered only after the death of the recipient's spouse, if any, and only when the recipient is not survived by a child who either is under twenty-one years of age or is blind or totally and permanently disabled as defined by the Supplemental Security Income criteria.

(3) The debt shall include the total amount of medical assistance provided when the recipient was fifty-five years of age or older or during a period of institutionalization as described in subsection (1) of this section and shall not include interest.

(4) In any probate proceedings in which the department has filed a claim under this section, no additional evidence of foundation shall be required for the admission of the department's payment record supporting its claim if the payment record bears the seal of the department, is certified as a true copy, and bears the signature of an authorized representative of the department.

(5) The department may waive or compromise its claim, in whole or in part, if the department determines that enforcement of the claim would not be in the best interests of the state or would result in undue hardship as provided in rules and regulations of the department.

Source: Laws 1994, LB 1224, § 39; Laws 1996, LB 1044, § 334; Laws 2001, LB 257, § 1; Laws 2004, LB 1005, § 7; R.S.Supp., 2004, § 68-1036.02; Laws 2006, LB 1248, § 19; Laws 2007, LB185, § 2. Operative date September 1, 2007.

68-921 Entitlement of spouse; terms, defined. For purposes of sections 68-921 to 68-925:

(1) Assets means property which is not exempt from consideration in determining eligibility for medical assistance under rules and regulations adopted and promulgated under section 68-922;

(2) Community spouse monthly income allowance means the amount of income determined by the department in accordance with section 1924 of the federal Social Security Act, as amended, Public Law 100-360, 42 U.S.C. 1396r-5;

(3) Community spouse resource allowance means the amount of assets determined in accordance with section 1924 of the federal Social Security Act, as amended, Public Law 100-360, 42 U.S.C. 1396r-5. For purposes of 42 U.S.C. 1396r-5(f)(2)(A)(i), the amount specified by the state shall be twelve thousand dollars;

(4) Home and community-based services means services furnished under home and community-based waivers as defined in Title XIX of the federal Social Security Act, as amended, 42 U.S.C. 1396;

(5) Qualified applicant means a person (a) who applies for medical assistance on or after July 9, 1988, (b) who is under care in a state-licensed hospital, a nursing facility, an intermediate care facility for the mentally retarded, an assisted-living facility, or a center for the developmentally disabled, as such terms are defined in the Health Care Facility Licensure Act, or an adult family home certified by the department or is receiving home and

community-based services, and (c) whose spouse is not under such care or receiving such services and is not applying for or receiving medical assistance;

(6) Qualified recipient means a person (a) who has applied for medical assistance before July 9, 1988, and is eligible for such assistance, (b) who is under care in a facility certified to receive medical assistance funds or is receiving home and community-based services, and (c) whose spouse is not under such care or receiving such services and is not applying for or receiving medical assistance; and

(7) Spouse means the spouse of a qualified applicant or qualified recipient.

Source: Laws 1988, LB 419, § 1; Laws 1989, LB 362, § 11; Laws 1991, LB 244, § 1; Laws 1996, LB 1044, § 336; Laws 1997, LB 608, § 4; Laws 2000, LB 819, § 81; R.S.1943, (2003), § 68-1038; Laws 2006, LB 1248, § 21; Laws 2007, LB185, § 3; Laws 2007, LB296, § 250.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 185, section 3, with LB 296, section 250, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 185 became operative September 1, 2007.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

68-922 Amount of entitlement; department; rules and regulations. For purposes of determining medical assistance eligibility and the right to and obligation of medical support pursuant to sections 68-716, 68-915, and 68-916, a spouse may retain (1) assets equivalent to the community spouse resource allowance and (2) an amount of income equivalent to the community spouse monthly income allowance.

The department shall administer this section in accordance with section 1924 of the Social Security Act, as amended, Public Law 100-360, 42 U.S.C. 1396r-5, and shall adopt and promulgate rules and regulations as necessary to implement and enforce sections 68-921 to 68-925.

Source: Laws 1988, LB 419, § 2; Laws 1989, LB 362, § 12; R.S.1943, (2003), § 68-1039; Laws 2006, LB 1248, § 22; Laws 2007, LB296, § 251.
Operative date July 1, 2007.

68-923 Assets; eligibility for assistance; future medical support; considerations; subrogation. If a portion of the aggregate assets is designated in accordance with section 68-924:

(1) Only the assets not designated for the spouse shall be considered in determining the eligibility of an applicant for medical assistance;

(2) In determining the eligibility of an applicant, the assets designated for the spouse shall not be taken into account and proof of adequate consideration for any assignment or transfer made as a result of the designation of assets shall not be required;

(3) The assets designated for the spouse shall not be considered to be available to an applicant or recipient for future medical support and the spouse shall have no duty of future medical support of the applicant or recipient from such assets;

(4) Recovery may not be made from the assets designated for the spouse for any amount paid for future medical assistance provided to the applicant or recipient; and

(5) Neither the department nor the state shall be subrogated to or assigned any future right of the applicant or recipient to medical support from the assets designated for the spouse.

Source: Laws 1988, LB 419, § 3; Laws 1989, LB 362, § 13; R.S.1943, (2003), § 68-1040; Laws 2006, LB 1248, § 23; Laws 2007, LB296, § 252.
Operative date July 1, 2007.

68-924 Designation of assets; procedure. A designation of assets pursuant to section 68-922 shall be evidenced by a written statement listing such assets and signed by the spouse. A copy of such statement shall be provided to the department at the time of application and shall designate assets owned as of the date of application. Failure to complete any assignments or transfers necessary to place the designated assets in sole ownership of the spouse within a reasonable time after the statement is signed as provided in rules and regulations adopted and promulgated under section 68-922 may render the applicant or recipient ineligible for assistance in accordance with such rules and regulations.

Source: Laws 1988, LB 419, § 5; Laws 1989, LB 362, § 14; R.S.1943, (2003), § 68-1042; Laws 2006, LB 1248, § 24; Laws 2007, LB296, § 253.
Operative date July 1, 2007.

68-925 Department; furnish statement. The department shall furnish to each qualified applicant for and each qualified recipient of medical assistance a clear and simple written statement explaining the provisions of section 68-922.

Source: Laws 1988, LB 419, § 6; Laws 1989, LB 362, § 15; Laws 1996, LB 1044, § 337; R.S.1943, (2003), § 68-1043; Laws 2006, LB 1248, § 25; Laws 2007, LB296, § 254.
Operative date July 1, 2007.

68-926 Legislative findings. The Legislature finds that (1) the department relies on health insurance and claims information from private insurers to ensure accuracy in processing state benefit program payments to providers and in verifying individual recipients' eligibility, (2) delay or refusal to provide such information causes unnecessary expenditures of state funds, (3) disclosure of such information to the department is permitted pursuant to the federal Health Insurance Portability and Accountability privacy rules under 45 C.F.R. part 164, and (4) for medical assistance program recipients who also have other insurance coverage, including coverage by licensed and self-funded insurers, the department is required by 42 U.S.C. 1396a(a)(25) to assure that licensed and self-funded insurers coordinate benefits with the program.

Source: Laws 2005, LB 589, § 1; R.S.Supp.,2005, § 68-10,100; Laws 2006, LB 1248, § 26; Laws 2007, LB296, § 255.
Operative date July 1, 2007.

68-927 Terms, defined. For purposes of sections 68-926 to 68-933:

(1) Coordinate benefits means:

(a) Provide to the department information regarding the licensed insurer's or self-funded insurer's existing coverage for an individual who is eligible for a state benefit program; and

(b) Meet payment obligations;

(2) Coverage information means health information possessed by a licensed insurer or self-funded insurer that is limited to the following information about an individual:

(a) Eligibility for coverage under a health plan;

(b) Coverage of health care under the health plan; or

(c) Benefits and payments associated with the health plan;

(3) Health plan means any policy of insurance issued by a licensed insurer or any employee benefit plan offered by a self-funded insurer that provides for payment to or on behalf of an individual as a result of an illness, disability, or injury or change in a health condition;

(4) Individual means a person covered by a state benefit program, including the medical assistance program, or a person applying for such coverage;

(5) Licensed insurer means any insurer, except a self-funded insurer, including a fraternal benefit society, producer, or other person licensed or required to be licensed, authorized or required to be authorized, or registered or required to be registered pursuant to the insurance laws of the state; and

(6) Self-funded insurer means any employer or union who or which provides a self-funded employee benefit plan.

Source: Laws 2005, LB 589, § 2; R.S.Supp.,2005, § 68-10,101; Laws 2006, LB 1248, § 27; Laws 2007, LB296, § 256.
Operative date July 1, 2007.

68-928 Licensed insurer or self-funded insurer; provide coverage information. (1)

Except as provided in subsection (2) of this section, at the request of the department, a licensed insurer or a self-funded insurer shall provide coverage information to the department without an individual's authorization for purposes of:

(a) Determining an individual's eligibility for state benefit programs, including the medical assistance program; or

(b) Coordinating benefits with state benefit programs.

Such information shall be provided within thirty days after the date of request unless good cause is shown. Requests for coverage information shall specify individual recipients for whom information is being requested.

(2)(a) Coverage information requested pursuant to subsection (1) of this section regarding a limited benefit policy shall be limited to whether a specified individual has coverage and, if so, a description of that coverage, and such information shall be used solely for the purposes of subdivision (1)(a) of this section.

(b) For purposes of this section, limited benefit policy means a policy of insurance issued by a licensed insurer that consists only of one or more, or any combination of the following:

(i) Coverage only for accident or disability income insurance, or any combination thereof;

(ii) Coverage for specified disease or illness; or

(iii) Hospital indemnity or other fixed indemnity insurance.

Source: Laws 2005, LB 589, § 3; R.S.Supp.,2005, § 68-10,102; Laws 2006, LB 1248, § 28; Laws 2007, LB296, § 257.
Operative date July 1, 2007.

68-930 Self-funded insurer; violation; civil penalty. The department may impose and collect a civil penalty on a self-funded insurer who violates the requirements of section 68-928 if the department finds that the self-funded insurer:

- (1) Committed the violation flagrantly and in conscious disregard of the requirements; or
- (2) Has committed violations with such frequency as to indicate a general business practice to engage in that type of conduct.

The civil penalty shall not be more than one thousand dollars for each violation, not to exceed an aggregate penalty of thirty thousand dollars, unless the violation by the self-funded insurer was committed flagrantly and in conscious disregard of section 68-928, in which case the penalty shall not be more than fifteen thousand dollars for each violation, not to exceed an aggregate penalty of one hundred fifty thousand dollars.

Source: Laws 2005, LB 589, § 5; R.S.Supp.,2005, § 68-10,104; Laws 2006, LB 1248, § 30; Laws 2007, LB296, § 258.
Operative date July 1, 2007.

68-931 Recovery; authorized. The department is authorized to recover all amounts paid or to be paid to state benefit programs as a result of failure to coordinate benefits by a licensed insurer or a self-funded insurer.

Source: Laws 2005, LB 589, § 6; R.S.Supp.,2005, § 68-10,105; Laws 2006, LB 1248, § 31; Laws 2007, LB296, § 259.
Operative date July 1, 2007.

68-932 Process for resolving violations; appeal. The department shall establish a process by rule and regulation for resolving any violation by a self-funded insurer of section 68-928 and for assessing the financial penalties contained in section 68-930. Any appeal of an action by the department under such policies shall be in accordance with the Administrative Procedure Act.

Source: Laws 2005, LB 589, § 7; R.S.Supp.,2005, § 68-10,106; Laws 2006, LB 1248, § 32; Laws 2007, LB296, § 260.
Operative date July 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

68-940 Penalties or damages; considerations; liability; costs and attorney's fees. (1) In determining the amount of any penalties or damages awarded under the False Medicaid Claims Act, the following shall be taken into account:

- (a) The nature of claims and the circumstances under which they were presented;

(b) The degree of culpability and history of prior offenses of the person presenting the claims;

(c) Coordination of the total penalties and damages arising from the same claims, goods, or services, whether based on state or federal statute; and

(d) Such other matters as justice requires.

(2)(a) Any person who presents a false medicaid claim is subject to civil liability as provided in section 68-936, except when the court finds that:

(i) The person committing the violation of the False Medicaid Claims Act furnished officials of the state responsible for investigating violations of the act with all information known to such person about the violation within thirty days after the date on which the defendant first obtained the information;

(ii) Such person fully cooperated with any state investigation of such violation; and

(iii) At the time such person furnished the state with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under the act with respect to such violation and the person did not have actual knowledge of the existence of an investigation into such violation.

(b) The court may assess not more than two times the amount of the false medicaid claims submitted because of the action of a person coming within the exception under subdivision (2)(a) of this section, and such person is also liable for the state's costs and attorney's fees for a civil action brought to recover any penalty or damages.

(3) Amounts recovered under the False Medicaid Claims Act shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund, except that the State Treasurer shall distribute civil penalties in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1996, LB 1155, § 70; Laws 1997, LB 307, § 111; R.S.1943, (2003), § 68-1037.04; Laws 2004, LB 1084, § 7; R.S.Supp.,2004, § 68-1079; Laws 2006, LB 1248, § 40; Laws 2007, LB296, § 261. Operative date July 1, 2007.

68-948 Medicaid Reform Council; established; members; duties; expenses; termination. (1) The Medicaid Reform Council is established. The council shall consist of ten persons appointed by the chairperson of the committee, in consultation with the committee, the Governor, and the department. The council shall include, but not be limited to, at least one representative from each of the following: Providers, recipients of medical assistance, advocates for such recipients, business representatives, insurers, and elected officials. The chairperson of the committee shall appoint the chairperson of the council. Members of the council may be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(2) The council shall (a) oversee and support implementation of reforms to the medical assistance program, including, but not limited to, reforms such as those contained in the Medicaid Reform Plan, (b) conduct at least two public meetings annually and other meetings at the call of the chairperson of the council, in consultation with the department and the chairperson of the committee, and (c) provide comments and recommendations to the

department regarding the administration of the medical assistance program and any proposed changes to such program.

(3) The Medicaid Reform Council and this section terminate on June 30, 2010.

Source: Laws 2006, LB 1248, § 48; Laws 2007, LB296, § 262.
Operative date July 1, 2007.
Termination date June 30, 2010.

68-949 Medical assistance program; legislative intent; department; duties; reports. (1) It is the intent of the Legislature that the department implement reforms to the medical assistance program such as those contained in the Medicaid Reform Plan, including (a) an incremental expansion of home and community-based services for aged persons and persons with disabilities consistent with such plan, (b) an increase in care coordination or disease management initiatives to better manage medical assistance expenditures on behalf of high-cost recipients with multiple or chronic medical conditions, and (c) other reforms as deemed necessary and appropriate by the department, in consultation with the committee and the Medicaid Reform Council.

(2)(a) The department shall develop recommendations relating to the provision of health care and related services for medicaid-eligible children under the state children's health insurance program as allowed under Title XIX and Title XXI of the federal Social Security Act. Such study and recommendations shall include, but not be limited to, the organization and administration of such program, the establishment of premiums, copayments, and deductibles under such program, and the establishment of limits on the amount, scope, and duration of services offered to recipients under such program.

(b) The department shall provide a draft report of such recommendations to the committee and the Medicaid Reform Council no later than October 1, 2007. The council shall conduct a public meeting no later than October 15, 2007, to discuss and receive public comment regarding such report. The council shall provide any comments and recommendations regarding such report in writing to the department and the committee no later than November 1, 2007. The department shall provide a final report of such recommendations to the Governor, the committee, and the council no later than December 1, 2007.

(3)(a) The department shall develop recommendations for further modification or replacement of the defined benefit structure of the medical assistance program. Such recommendations shall be consistent with the public policy in section 68-905 and shall consider the needs and resources of low-income Nebraska residents who are eligible or may become eligible for medical assistance, the experience and outcomes of other states that have developed and implemented such changes, and other relevant factors as determined by the department.

(b) The department shall provide a draft report of such recommendations to the committee and the Medicaid Reform Council no later than October 1, 2008. The council shall conduct a public meeting no later than October 15, 2008, to discuss and receive public comment regarding such report. The council shall provide any comments and recommendations

regarding such report in writing to the department and the committee no later than November 1, 2008. The department shall provide a final report of such recommendations to the Governor, the committee, and the council no later than December 1, 2008.

Source: Laws 2006, LB 1248, § 49; Laws 2007, LB296, § 263.
Operative date July 1, 2007.

ARTICLE 10

ASSISTANCE, GENERALLY

(a) ASSISTANCE TO THE AGED, BLIND, OR DISABLED

Section.

- 68-1001.01. Department of Health and Human Services; rules and regulations; promulgate.
- 68-1002. Persons eligible for assistance.
- 68-1007. Determination of need; elements considered; amounts disregarded.
- 68-1008. Application for assistance; investigation; notification.
- 68-1014. Assistance; payment to guardian or conservator; when authorized.

(b) PROCEDURE AND PENALTIES

- 68-1015. Assistance; investigation; attendance of witnesses; production of records; subpoena power; oaths.
- 68-1016. Assistance; appeals; procedure.
- 68-1017. Assistance; violations; penalties.

(l) LONG-TERM CARE PARTNERSHIP PROGRAM

- 68-1095.01. Long-Term Care Partnership Program; established; Department of Health and Human Services; duties.

(a) ASSISTANCE TO THE AGED, BLIND, OR DISABLED

68-1001.01 Department of Health and Human Services; rules and regulations; promulgate. For the purpose of adding to the security and social adjustment of former and potential recipients of assistance to the aged, blind, and disabled, and of medical assistance, the Department of Health and Human Services is authorized to promulgate rules and regulations providing for services to such persons.

Source: Laws 1969, c. 558, § 1, p. 2274; Laws 1996, LB 1044, § 305; Laws 2007, LB296, § 264.
Operative date July 1, 2007.

68-1002 Persons eligible for assistance. In order to qualify for assistance to the aged, blind, or disabled, an individual:

- (1) Must be a bona fide resident of the State of Nebraska, except that a resident of another state who enters the State of Nebraska solely for the purpose of receiving care in a home licensed by the Department of Health and Human Services shall not be deemed to be a bona fide resident of Nebraska while such care is being provided;

(2) Shall not be receiving care or services as an inmate of a public institution, except as a patient in a medical institution, and if the individual is a patient in an institution for tuberculosis or mental diseases, he or she has attained the age of sixty-five years;

(3) Shall not have deprived himself or herself directly or indirectly of any property whatsoever for the purpose of qualifying for assistance to the aged, blind, or disabled;

(4) May receive care in a public or private institution only if such institution is subject to a state authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; and

(5) Must be in need of shelter, maintenance, or medical care.

Source: Laws 1965, c. 395, § 2, p. 1264; Laws 1965, c. 396, § 1, p. 1274; Laws 1965, c. 397, § 1, p. 1276; Laws 1967, c. 409, § 2, p. 1273; Laws 1969, c. 343, § 5, p. 1208; Laws 1977, LB 480, § 1; Laws 1996, LB 1044, § 306; Laws 2007, LB296, § 265.
Operative date July 1, 2007.

68-1007 Determination of need; elements considered; amounts disregarded. In determining need for assistance to the aged, blind, or disabled, the Department of Health and Human Services shall take into consideration all other income and resources of the individual claiming such assistance, as well as any expenses reasonably attributable to the earning of any such income, except as otherwise provided in this section. In making such determination with respect to any individual who is blind, there shall be disregarded the first eighty-five dollars per month of earned income plus one-half of earned income in excess of eighty-five dollars per month and, for a period not in excess of twelve months, such additional amounts of other income and resources, in the case of an individual who has an approved plan for achieving self-support, as may be necessary for the fulfillment of such plan. In making such determination with respect to an individual who has attained age sixty-five, or who is permanently and totally disabled, and is claiming aid to the aged, blind, or disabled, the department shall disregard earned income at least to the extent such income was disregarded on January 1, 1972, as provided in 42 U.S.C. 1396a(f).

Source: Laws 1965, c. 395, § 7, p. 1266; Laws 1967, c. 411, § 1, p. 1275; Laws 1969, c. 539, § 1, p. 2189; Laws 1972, LB 760, § 1; Laws 1982, LB 522, § 37; Laws 1987, LB 255, § 1; Laws 1996, LB 1044, § 309; Laws 2007, LB296, § 266.
Operative date July 1, 2007.

Cross Reference

Available resources, computation, see section 68-129.

68-1008 Application for assistance; investigation; notification. Upon the filing of an application for assistance to the aged, blind, or disabled, the Department of Health and Human Services shall make such investigation as it deems necessary to determine the circumstances existing in each case. Each applicant and recipient shall be notified in writing as to (1) the approval or disapproval of any application, (2) the amount of payments awarded, (3) any change in the amount of payments awarded, and (4) the discontinuance of payments.

Source: Laws 1965, c. 395, § 8, p. 1267; Laws 1967, c. 253, § 2, p. 673; Laws 1977, LB 312, § 8; Laws 1982, LB 522, § 38; Laws 1996, LB 1044, § 310; Laws 2007, LB296, § 267.
Operative date July 1, 2007.

68-1014 Assistance; payment to guardian or conservator; when authorized. If any guardian or conservator shall have been appointed to take charge of the property of any recipient of assistance to the aged, blind, or disabled, aid to dependent children, or medical assistance, such assistance payments shall be made to the guardian or conservator upon his or her filing with the Department of Health and Human Services a certified copy of his or her letters of guardianship or conservatorship.

Source: Laws 1965, c. 394, § 2, p. 1261; Laws 1982, LB 522, § 39; Laws 1996, LB 1044, § 311; Laws 2007, LB296, § 268.
Operative date July 1, 2007.

(b) PROCEDURE AND PENALTIES

68-1015 Assistance; investigation; attendance of witnesses; production of records; subpoena power; oaths. For the purpose of any investigation or hearing, the chief executive officer of the Department of Health and Human Services and the division directors appointed pursuant to section 81-3115, through authorized agents, shall have the power to compel, by subpoena, the attendance and testimony of witnesses and the production of books and papers. Witnesses may be examined on oath or affirmation.

Source: Laws 1965, c. 394, § 3, p. 1262; Laws 1982, LB 522, § 40; Laws 1996, LB 1044, § 312; Laws 2007, LB296, § 269.
Operative date July 1, 2007.

68-1016 Assistance; appeals; procedure. The chief executive officer of the Department of Health and Human Services, or his or her designated representative, shall provide for granting an opportunity for a fair hearing to any individual whose claim for assistance to the aged, blind, or disabled, aid to dependent children, emergency assistance, medical assistance, commodities, or food stamp benefits is denied, is not granted in full, or is not acted upon with reasonable promptness. An appeal shall be taken by filing with the department a written notice of appeal setting forth the facts on which the appeal is based. The department shall thereupon, in writing, notify the appellant of the time and place for hearing which shall be not less than one week nor more than six weeks from the date of such notice. Hearings shall be before the duly authorized agent of the department. On the basis of evidence adduced, the duly authorized agent shall enter a final order on such appeal, which order shall be transmitted to the appellant.

Source: Laws 1965, c. 394, § 4, p. 1262; Laws 1969, c. 540, § 1, p. 2190; Laws 1982, LB 522, § 41; Laws 1989, LB 362, § 9; Laws 1996, LB 1044, § 313; Laws 1998, LB 1073, § 57; Laws 2007, LB296, § 270.
Operative date July 1, 2007.

68-1017 Assistance; violations; penalties. Any person, including vendors and providers of medical assistance and social services, who, by means of a willfully false statement or representation, or by impersonation or other device, obtains or attempts to obtain, or aids or abets any person to obtain or to attempt to obtain (1) an assistance certificate of award to which he or she is not entitled, (2) any commodity, any foodstuff, any food coupon, any food stamp coupon, electronic benefit, or electronic benefit card, or any payment to which such individual is not entitled or a larger payment than that to which he or she is entitled, (3) any payment made on behalf of a recipient of medical assistance or social services, or (4) any other benefit administered by the Department of Health and Human Services, or who violates any statutory provision relating to assistance to the aged, blind, or disabled, aid to dependent children, social services, or medical assistance, commits an offense and shall upon conviction be punished as follows: (a) If the aggregate value of all funds or other benefits obtained or attempted to be obtained is less than five hundred dollars, the person so convicted shall be guilty of a Class III misdemeanor; or (b) if the aggregate value of all funds and other benefits obtained or attempted to be obtained is five hundred dollars or more, the person so convicted shall be guilty of a Class IV felony.

Source: Laws 1965, c. 394, § 5, p. 1262; Laws 1969, c. 541, § 1, p. 2192; Laws 1977, LB 39, § 127; Laws 1984, LB 1127, § 2; Laws 1996, LB 1044, § 314; Laws 1998, LB 1073, § 58; Laws 2007, LB296, § 271.
Operative date July 1, 2007.

(I) LONG-TERM CARE PARTNERSHIP PROGRAM

68-1095.01 Long-Term Care Partnership Program; established; Department of Health and Human Services; duties. The Long-Term Care Partnership Program is established. The program shall be administered by the Department of Health and Human Services in accordance with federal requirements on state long-term care partnership programs. In order to implement the program, the department shall file a state plan amendment with the federal Centers for Medicare and Medicaid Services pursuant to the requirements set forth in 42 U.S.C. 1396p(b), as such section existed on March 1, 2006.

Source: Laws 2006, LB 965, § 7; Laws 2007, LB296, § 272.
Operative date July 1, 2007.

ARTICLE 11

DEPARTMENT ON AGING ADVISORY COMMITTEE

Section.

- 68-1101. Division of Medicaid and Long-Term Care Advisory Committee on Aging; created; members; appointment; term; vacancy.
- 68-1103. Committee; officers; meetings.
- 68-1104. Committee; duties.

68-1105. Committee; special committees; members; compensation.

68-1101 Division of Medicaid and Long-Term Care Advisory Committee on Aging; created; members; appointment; term; vacancy. The Division of Medicaid and Long-Term Care Advisory Committee on Aging is created. The committee shall consist of twelve members, one from each of the planning-and-service areas as designated in the Nebraska Community Aging Services Act and the remaining members from the state at large.

Any member serving on the Department of Health and Human Services Advisory Committee on Aging on July 1, 2007, shall continue to serve until his or her term expires. As the terms of the members expire, the Governor shall, on or before March 1 of such year, appoint or reappoint a member of the committee for a term of four years. Each area agency on aging serving a designated planning-and-service area shall recommend to the Governor the names of persons qualified to represent the senior population of the planning-and-service area. Any vacancy on the committee shall be filled for the unexpired term. A vacancy shall exist when a member of the committee ceases to be a resident of the planning-and-service area from which he or she was appointed or reappointed. The members to be appointed to represent a planning-and-service area shall be residents of the planning-and-service area from which they are appointed. Members of the advisory committee shall not be elected public officials or staff of the Department of Health and Human Services or of an area agency on aging.

Source: Laws 1965, c. 409, § 1, p. 1311; Laws 1971, LB 97, § 1; Laws 1982, LB 404, § 30; Laws 1987, LB 456, § 1; Laws 1996, LB 1044, § 341; Laws 2007, LB296, § 273.
Operative date July 1, 2007.

Cross Reference

Nebraska Community Aging Services Act, see section 81-2201.

68-1103 Committee; officers; meetings. Members of the Division of Medicaid and Long-Term Care Advisory Committee on Aging shall meet within thirty days after their appointment to select from the members of the committee a chairperson, and such other officers as committee members deem necessary, who shall serve for a period of two years. The committee shall elect a new chairperson every two years thereafter. The committee shall meet at regular intervals at least once each year and may hold special meetings at the call of the chairperson or at the request of a majority of the members of the committee. The committee shall meet at the seat of government or such other place as the members of the committee may designate.

Source: Laws 1965, c. 409, § 3, p. 1312; Laws 1971, LB 97, § 2; Laws 1982, LB 404, § 31; Laws 1996, LB 1044, § 342; Laws 2007, LB296, § 274.
Operative date July 1, 2007.

68-1104 Committee; duties. The Division of Medicaid and Long-Term Care Advisory Committee on Aging shall advise the Division of Medicaid and Long-Term Care of the Department of Health and Human Services regarding:

(1) The collection of facts and statistics and special studies of conditions and problems pertaining to the employment, health, financial status, recreation, social adjustment, or other conditions and problems pertaining to the general welfare of the aging of the state;

(2) Recommendations to state and local agencies serving the aging for purposes of coordinating such agencies' activities, and reports from the various state agencies and institutions on matters within the jurisdiction of the committee;

(3) The latest developments of research, studies, and programs being conducted throughout the nation on the problems and needs of the aging;

(4) The mutual exchange of ideas and information on the aging between federal, state, and local governmental agencies, private organizations, and individuals; and

(5) Cooperation with agencies, federal, state, and local or private organizations, in administering and supervising demonstration programs of services for aging designed to foster continued participation of older people in family and community life and to prevent insofar as possible the onset of dependency and the need for long-term institutional care.

The committee shall have the power to create special committees to undertake such special studies as members of the committee shall authorize and may include noncommittee members who are qualified in any field of activity related to the general welfare of the aging in the membership of such committees.

Source: Laws 1965, c. 409, § 4, p. 1313; Laws 1971, LB 97, § 3; Laws 1981, LB 545, § 20; Laws 1982, LB 404, § 32; Laws 1996, LB 1044, § 343; Laws 2007, LB296, § 275.
Operative date July 1, 2007.

68-1105 Committee; special committees; members; compensation. The members of the Division of Medicaid and Long-Term Care Advisory Committee on Aging, and noncommittee members serving on special committees, shall receive no compensation for their services other than reimbursement for actual and necessary expenses as provided in sections 81-1174 to 81-1177. Committee expenses and any office expenses shall be paid from funds made available to the committee by the Legislature.

Source: Laws 1965, c. 409, § 5, p. 1314; Laws 1971, LB 97, § 4; Laws 1974, LB 660, § 4; Laws 1981, LB 204, § 104; Laws 1982, LB 404, § 33; Laws 1996, LB 1044, § 344; Laws 2007, LB296, § 276.
Operative date July 1, 2007.

ARTICLE 12

SOCIAL SERVICES

Section.

68-1204. Social services or specialized developmental disability services; rules and regulations; agreements; fee schedules.

68-1205. Matching funds.

68-1206. Social services; administration; contracts; payments.

68-1207. Department of Health and Human Services; public child welfare services; supervise; caseload requirements.

- 68-1207.01. Department of Health and Human Services; caseloads report; contents.
- 68-1210. Department of Health and Human Services; certain foster care children; payment rates.

68-1204 Social services or specialized developmental disability services; rules and regulations; agreements; fee schedules. (1) For the purpose of providing or purchasing social services described in section 68-1202, the state hereby accepts and assents to all applicable provisions of the federal Social Security Act, as such act existed on July 1, 2006. The Department of Health and Human Services may adopt and promulgate rules and regulations, enter into agreements, and adopt fee schedules with regard to social services described in section 68-1202.

(2) The department shall adopt and promulgate rules and regulations to administer funds under Title XX of the federal Social Security Act, as such title existed on July 1, 2006, designated for specialized developmental disability services.

Source: Laws 1973, LB 511, § 4; Laws 1991, LB 830, § 31; Laws 1996, LB 1044, § 345; Laws 2006, LB 994, § 66; Laws 2007, LB296, § 277.
Operative date July 1, 2007.

68-1205 Matching funds. The matching funds required to obtain the federal share of the services described in section 68-1202 may come from either state, county, or donated sources in amounts and other provisions to be determined by the Department of Health and Human Services.

Source: Laws 1973, LB 511, § 5; Laws 1996, LB 1044, § 346; Laws 2006, LB 994, § 67; Laws 2007, LB296, § 278.
Operative date July 1, 2007.

68-1206 Social services; administration; contracts; payments. (1) The Department of Health and Human Services shall administer the program of social services in this state. The department may contract with other social agencies for the purchase of social services at rates not to exceed those prevailing in the state or the cost at which the department could provide those services. The statutory maximum payments for the separate program of aid to dependent children shall apply only to public assistance grants and shall not apply to payments for social services.

(2) In determining the rate or rates to be paid by the department for child care as defined in section 43-2605, the department shall adopt a fixed-rate schedule for the state or a fixed-rate schedule for an area of the state applicable to each child care program category of provider as defined in section 71-1910 which may claim reimbursement for services provided by the federal Child Care Subsidy program, except that the department shall not pay a rate higher than that charged by an individual provider to that provider's private clients. The schedule may provide separate rates for care for infants, for children with special needs, including disabilities or technological dependence, or for other individual categories of children. The schedule shall be effective on October 1 of every year and shall be revised annually by the department.

Source: Laws 1973, LB 511, § 6; Laws 1982, LB 522, § 44; Laws 1991, LB 836, § 26; Laws 1995, LB 401, § 22; Laws 1996, LB 1044, § 347; Laws 2006, LB 994, § 68; Laws 2007, LB296, § 279.
Operative date July 1, 2007.

68-1207 Department of Health and Human Services; public child welfare services; supervise; caseload requirements. The Department of Health and Human Services shall supervise all public child welfare services as described by law. The department shall establish and maintain caseloads to carry out child welfare services which provide for adequate, timely, and indepth investigations and services to children and families. In establishing the standards for such caseloads, the department shall (1) include the workload factors that may differ due to geographic responsibilities, office location, and the travel required to provide a timely response in the investigation of abuse and neglect, the protection of children, and the provision of services to children and families in a uniform and consistent statewide manner and (2) consider workload standards recommended by national child welfare organizations and factors related to the attainment of such standards. The department shall consult with the appropriate employee representative in establishing such standards.

To carry out the provisions of this section, the Legislature shall provide funds for additional staff.

Source: Laws 1973, LB 511, § 7; Laws 1985, LB 1, § 2; Laws 1990, LB 720, § 1; Laws 1996, LB 1044, § 348; Laws 2005, LB 264, § 2; Laws 2007, LB296, § 280.
Operative date July 1, 2007.

68-1207.01 Department of Health and Human Services; caseloads report; contents. The Department of Health and Human Services shall annually provide a report to the Legislature and Governor outlining the caseloads of child protective services, the factors considered in their establishment, and the fiscal resources necessary for their maintenance. Such report shall include:

(1) A comparison of caseloads established by the department with the workload standards recommended by national child welfare organizations along with the amount of fiscal resources necessary to maintain such caseloads in Nebraska;

(2)(a) The number of child welfare services caseworkers and case managers employed by the State of Nebraska and child welfare services workers, providing services directly to children and families, who are under contract with the State of Nebraska or employed by a private entity under contract with the State of Nebraska and (b) statistics on the average length of employment in such positions, statewide and by health and human services area;

(3)(a) The average caseload of child welfare services caseworkers and case managers employed by the State of Nebraska and child welfare services workers, providing services directly to children and families, who are under contract with the State of Nebraska or employed by a private entity under contract with the State of Nebraska and (b) the outcomes of such cases, including the number of children reunited with their families, children

adopted, children in guardianships, placement of children with relatives, and other permanent resolutions established, statewide and by health and human services area; and

(4) The average cost of training child welfare services caseworkers and case managers employed by the State of Nebraska and child welfare services workers, providing services directly to children and families, who are under contract with the State of Nebraska or employed by a private entity under contract with the State of Nebraska, statewide and by health and human services area.

Source: Laws 1990, LB 720, § 2; Laws 1996, LB 1044, § 349; Laws 2005, LB 264, § 3; Laws 2007, LB296, § 281.
Operative date July 1, 2007.

68-1210 Department of Health and Human Services; certain foster care children; payment rates. Notwithstanding any other provision of law, the Department of Health and Human Services shall have the authority through rule or regulation to establish payment rates for children with special needs who are in foster care and in the custody of the department.

Source: Laws 1990, LB 1022, § 1; Laws 1996, LB 1044, § 350; Laws 2007, LB296, § 282.
Operative date July 1, 2007.

ARTICLE 14

GENETICALLY HANDICAPPED PERSONS

Section.

- 68-1402. Department of Health and Human Services; program for persons with genetically handicapping conditions; duties.
- 68-1403. Genetically handicapped persons; medical care program; services and treatment included.
- 68-1405. Department of Health and Human Services; medical care program; uniform standards of financial eligibility and payment; establish.

68-1402 Department of Health and Human Services; program for persons with genetically handicapping conditions; duties. The Department of Health and Human Services shall establish and administer a program for the medical care of persons of all ages with genetically handicapping conditions, including cystic fibrosis, hemophilia, and sickle cell disease, through physicians and health care providers that are qualified pursuant to the regulations of the department to provide such medical services. The department shall adopt such rules and regulations pursuant to the Administrative Procedure Act, as are necessary for the implementation of the provisions of the Genetically Handicapped Persons Act. The department shall establish priorities for the use of funds and provision of services under the Genetically Handicapped Persons Act.

Source: Laws 1980, LB 989, § 2; Laws 1996, LB 1044, § 351; Laws 2006, LB 994, § 69; Laws 2007, LB296, § 283.
Operative date July 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

68-1403 Genetically handicapped persons; medical care program; services and treatment included. The program established under the Genetically Handicapped Persons Act, which shall be under the supervision of the Department of Health and Human Services, shall include any or all of the following:

- (1) Initial intake and diagnostic evaluation;
- (2) The cost of blood transfusion and use of blood derivatives, or both;
- (3) Rehabilitation services, including reconstructive surgery;
- (4) Expert diagnosis;
- (5) Medical treatment;
- (6) Surgical treatment;
- (7) Hospital care;
- (8) Physical therapy;
- (9) Occupational therapy;
- (10) Materials and prescription drugs;
- (11) Appliances and their upkeep, maintenance, and care;
- (12) Maintenance, transportation, or care incidental to any other form of services; and
- (13) Appropriate and sufficient staff to carry out the provisions of the Genetically Handicapped Persons Act.

Source: Laws 1980, LB 989, § 3; Laws 1996, LB 1044, § 352; Laws 2006, LB 994, § 70; Laws 2007, LB296, § 284.
Operative date July 1, 2007.

68-1405 Department of Health and Human Services; medical care program; uniform standards of financial eligibility and payment; establish. The Department of Health and Human Services shall establish uniform standards of financial eligibility for the treatment services under the program established under the Genetically Handicapped Persons Act, including a uniform formula for the payment of services by physicians and health care providers rendered under such program and such formula for payment shall provide for reimbursement at rates similar to those set by other federal and state programs, and private entitlements. The standards of the department for financial eligibility shall be the same as those established for Medically Handicapped Children's Services, as administered by the department. All county or district health departments shall use the uniform standards for financial eligibility and uniform formula for payment established by the department. All payments shall be used in support of the program for services established under the act.

The department shall establish payment schedules for services.

Source: Laws 1980, LB 989, § 5; Laws 1985, LB 249, § 5; Laws 1996, LB 1044, § 353; Laws 2006, LB 994, § 71; Laws 2007, LB296, § 285.
Operative date July 1, 2007.

ARTICLE 15

DISABLED PERSONS AND FAMILY SUPPORT

(a) DISABLED PERSONS AND FAMILY SUPPORT ACT

Section.

68-1503. Terms, defined.

68-1514. Denial of support; hearing provided.

(b) NEBRASKA LIFESPAN RESPITE SERVICES PROGRAM

68-1521. Terms, defined.

68-1522. Nebraska Lifespan Respite Services Program; established.

68-1523. Program; administration.

(a) DISABLED PERSONS AND FAMILY SUPPORT ACT

68-1503 Terms, defined. For purposes of the Disabled Persons and Family Support Act:

(1) Department means the Department of Health and Human Services;

(2) Disabled family member or disabled person means a person who has a medically determinable severe, chronic disability which:

(a) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(b) Is likely to continue indefinitely;

(c) Results in substantial functional limitations in two or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, (vii) work skills or work tolerance, and (viii) economic sufficiency; and

(d) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, vocational rehabilitation, or other services which are of lifelong or extended duration and are individually planned and coordinated; and

(3) Other support programs means all forms of local, state, or federal assistance, grants-in-aid, educational programs, or support provided by public or private funds for disabled persons or their families.

Source: Laws 1981, LB 389, § 3; Laws 1996, LB 1044, § 354; Laws 2006, LB 994, § 72; Laws 2007, LB296, § 286.
Operative date July 1, 2007.

68-1514 Denial of support; hearing provided. The chief executive officer of the department, or his or her designated representative, shall provide an opportunity for a fair hearing to any family or disabled person who is denied support pursuant to the Disabled Persons and Family Support Act.

Source: Laws 1981, LB 389, § 14; Laws 1996, LB 1044, § 355; Laws 2006, LB 994, § 73; Laws 2007, LB296, § 287.
Operative date July 1, 2007.

(b) NEBRASKA LIFESPAN RESPITE SERVICES PROGRAM

68-1521 Terms, defined. For purposes of sections 68-1520 to 68-1528:

(1) Caregiver means an individual providing ongoing care for an individual unable to care for himself or herself;

(2) Community lifespan respite services program means a noncategorical respite services program that:

(a) Is operated by a community-based private nonprofit or for-profit agency or a public agency that provides respite services;

(b) Receives funding through the Nebraska Lifespan Respite Services Program established under section 68-1522;

(c) Serves an area in one or more of the six regional services areas of the department;

(d) Acts as a single local source for respite services information and referral; and

(e) Facilitates access to local respite services;

(3) Department means the Department of Health and Human Services;

(4) Noncategorical care means care without regard to the age, type of special needs, or other status of the individual receiving care;

(5) Provider means an individual or agency selected by a family or caregiver to provide respite services to an individual with special needs;

(6) Respite care means the provision of short-term relief to primary caregivers from the demands of ongoing care for an individual with special needs; and

(7) Respite services includes:

(a) Recruiting and screening of paid and unpaid respite care providers;

(b) Identifying local training resources and organizing training opportunities for respite care providers;

(c) Matching of families and caregivers with providers and other types of respite care;

(d) Linking families and caregivers with payment resources;

(e) Identifying, coordinating, and developing community resources for respite services;

(f) Quality assurance and evaluation; and

(g) Assisting families and caregivers to identify respite care needs and resources.

Source: Laws 1999, LB 148, § 2; Laws 2006, LB 994, § 74; Laws 2007, LB296, § 288.
Operative date July 1, 2007.

68-1522 Nebraska Lifespan Respite Services Program; established. The department shall establish the Nebraska Lifespan Respite Services Program to develop and encourage statewide coordination of respite services and to work with community-based private nonprofit or for-profit agencies, public agencies, and interested citizen groups in

the establishment of community lifespan respite services programs. The Nebraska Lifespan Respite Services Program shall:

- (1) Provide policy and program development support, including, but not limited to, data collection and outcome measures;
- (2) Identify and promote resolution of local and state-level policy concerns;
- (3) Provide technical assistance to community lifespan respite services programs;
- (4) Develop and distribute respite services information;
- (5) Promote the exchange of information and coordination among state and local governments, community lifespan respite services programs, agencies serving individuals unable to care for themselves, families, and respite care advocates to encourage efficient provision of respite services and reduce duplication of effort;
- (6) Ensure statewide access to community lifespan respite services programs; and
- (7) Monitor and evaluate implementation of community lifespan respite services programs.

Source: Laws 1999, LB 148, § 3; Laws 2006, LB 994, § 75; Laws 2007, LB296, § 289.
Operative date July 1, 2007.

68-1523 Program; administration. (1) The department, through the Nebraska Lifespan Respite Services Program, shall coordinate the establishment of community lifespan respite services programs. The program shall accept proposals submitted in the form and manner required by the program from community-based private nonprofit or for-profit agencies or public agencies that provide respite services to operate community lifespan respite services programs. According to criteria established by the department, the Nebraska Lifespan Respite Services Program shall designate and fund agencies described in this section to operate community lifespan respite services programs.

(2) The department shall create the position of program specialist for the Nebraska Lifespan Respite Services Program to administer the program.

Source: Laws 1999, LB 148, § 4; Laws 2006, LB 994, § 76; Laws 2007, LB296, § 290.
Operative date July 1, 2007.

ARTICLE 17

WELFARE REFORM

(a) WELFARE REFORM ACT

Section.

- 68-1709. Legislative findings and declarations.
- 68-1710. Legislative intent.
- 68-1713. Department of Health and Human Services; implementation of policies; transitional health care benefits.
- 68-1718. Financial assistance; comprehensive assets assessment required; contents; periodic assessments.
- 68-1721. Principal wage earner and other nonexempt members of applicant family; duties.
- 68-1722. Legislative findings; case management practices and supportive services; department; powers and duties; extension of time limit on cash assistance; when.

- 68-1723. Cash assistance; requirements; extension of time limit; when; hearing; review.
- 68-1724. Cash assistance; duration; reimbursement of expenses; when; conditions; extension of time limit.
- 68-1729. Repealed. Laws 2007, LB 296, § 815.
- 68-1730. Repealed. Laws 2007, LB 296, § 815.
- 68-1732. Integrated programs and policies; legislative intent.

(a) WELFARE REFORM ACT

68-1709 Legislative findings and declarations. The Legislature finds and declares that the primary purpose of the welfare programs in this state is to provide temporary, transitional support for Nebraska families so that economic self-sufficiency is attained in as expeditious a manner as possible. The Legislature further finds and declares that this goal is to be accomplished through individualized assessments of the personal and economic resources of each applicant for public assistance and through the use of individualized self-sufficiency contracts.

The Legislature further finds and declares that it is in the best interests of the state, its citizens, and especially those receiving public assistance through welfare programs in this state that the welfare system be reformed to support, stabilize, and enhance individual and family life in Nebraska by: (1) Pursuing efforts to help Nebraskans avoid poverty and prevent the need for welfare; (2) eliminating existing complex and conflicting welfare programs; (3) creating a simplified program in place of the existing complex and conflicting welfare programs; (4) removing disincentives to work and promoting economic self-sufficiency; (5) providing individuals and families the support needed to move from public assistance to economic self-sufficiency; (6) changing public assistance from entitlements to temporary, contract-based support; (7) removing barriers to public assistance for intact families; (8) basing the duration of public assistance upon the individual circumstances of each applicant within the time limits allowed under federal law; (9) providing continuing assistance and support for persons sixty-five years of age or over and for individuals and families with physical, mental, or intellectual limitations preventing total economic self-sufficiency; (10) supporting regular school attendance of children; and (11) promoting public sector, private sector, individual, and family responsibility.

Source: Laws 1994, LB 1224, § 9; Laws 2007, LB351, § 4.
Effective date September 1, 2007.

68-1710 Legislative intent. It is the intent of the Legislature that, with the passage of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, the Department of Health and Human Services implement the Welfare Reform Act in a manner consistent with federal law.

Source: Laws 1997, LB 864, § 12; Laws 2007, LB351, § 5.
Effective date September 1, 2007.

68-1713 Department of Health and Human Services; implementation of policies; transitional health care benefits. (1) The Department of Health and Human Services shall implement the following policies:

- (a) Permit Work Experience in Private for-Profit Enterprises;
- (b) Permit Job Search;
- (c) Permit Employment to be Considered a Program Component;
- (d) Make Sanctions More Stringent to Emphasize Participant Obligations;
- (e) Alternative Hearing Process;
- (f) Permit Adults in Two-Parent Households to Participate in Activities Based on Their Self-Sufficiency Needs;
- (g) Eliminate Exemptions for Individuals with Children Between the Ages of 12 Weeks and Age Six;
- (h) Providing Poor Working Families with Transitional Child Care to Ease the Transition from Welfare to Self-Sufficiency;
- (i) Provide Transitional Health Care for 12 Months After Termination of ADC if funding for such transitional medical assistance is available under Title XIX of the federal Social Security Act, as amended, as described in section 68-906;
- (j) Require Adults to Ensure that Children in the Family Unit Attend School;
- (k) Encourage Minor Parents to Live with Their Parents;
- (l) Establish a Resource Limit of \$4,000 for a single individual and \$6,000 for two or more individuals for ADC;
- (m) Exclude the Value of One Vehicle Per Family When Determining ADC Eligibility;
- (n) Exclude the Cash Value of Life Insurance Policies in Calculating Resources for ADC;
- (o) Establish Food Stamps as a Continuous Benefit with Eligibility Reevaluated with Yearly Redeterminations;
- (p) Establish a Budget the Gap Methodology Whereby Countable Earned Income is Subtracted from the Standard of the Need and Payment is Based on the Difference or Maximum Payment Level, Whichever is Less. That this Gap be Established at a Level that Encourages Work but at Least at a Level that Ensures that Those Currently Eligible for ADC do not Lose Eligibility Because of the Adoption of this Methodology;
- (q) Adopt an Earned Income Disregard of Twenty Percent of Gross Earnings in the ADC Program and One Hundred Dollars in the Related Medical Assistance Program;
- (r) Disregard Financial Assistance Received Intended for Books, Tuition, or Other Self-Sufficiency Related Use;
- (s) Culture: Eliminate the 100-Hour Rule, The Quarter of Work Requirement, and The 30-Day Unemployed/Underemployed Period for ADC-UP Eligibility; and
- (t) Make ADC a Time-Limited Program.

(2) The Department of Health and Human Services shall (a) apply for a waiver to allow for a sliding-fee schedule for the population served by the caretaker relative program or (b) pursue other public or private mechanisms, to provide for transitional health care benefits to individuals and families who do not qualify for cash assistance. It is the intent of the

Legislature that transitional health care coverage be made available on a sliding-scale basis to individuals and families with incomes up to one hundred eighty-five percent of the federal poverty level if other health care coverage is not available.

Source: Laws 1994, LB 1224, § 13; Laws 1995, LB 455, § 10; Laws 1996, LB 1044, § 357; Laws 1997, LB 864, § 13; Laws 2002, Second Spec. Sess., LB 8, § 3; Laws 2006, LB 994, § 77; Laws 2007, LB351, § 6.
Effective date September 1, 2007.

68-1718 Financial assistance; comprehensive assets assessment required; contents; periodic assessments. (1) At the time an individual or a family applies for financial assistance pursuant to section 43-512, an assessment shall be conducted. Eligibility determination shall begin with a comprehensive assets assessment, in which the applicant and case manager collaborate to identify the economic and personal resources available to the applicant. Each applicant shall work with only one case manager who shall facilitate all service provision.

(2) Each applicant's personal resources shall be assessed in the comprehensive assets assessment. For purposes of this section, personal resources shall include education, vocational skills, employment history, health, life skills, personal strengths, and support from family and the community. This assessment shall also include a determination of the applicant's goals, employment background, educational background, housing needs, child care and transportation needs, health care needs, and other barriers to economic self-sufficiency.

(3) The comprehensive assets assessment shall structure personal resources information and control subjectivity. The assessment shall be used:

(a) To develop a self-sufficiency contract under section 68-1719 and promote services which specifically lead to self-sufficiency; and

(b) To determine if the applicant should be referred to other community resources for assistance.

(4) Periodic assessments, including an exit assessment prior to implementation of the time limit on cash assistance as provided in section 68-1724, shall be conducted with recipients to establish if the terms of the self-sufficiency contract have been met by the recipient family and by the state.

Source: Laws 1994, LB 1224, § 18; Laws 1997, LB 864, § 14; Laws 2007, LB351, § 7.
Effective date September 1, 2007.

68-1721 Principal wage earner and other nonexempt members of applicant family; duties. (1) Under the self-sufficiency contract developed under section 68-1719, the principal wage earner and other nonexempt members of the applicant family shall be required to participate in one or more of the following approved activities, including, but not limited to, education, job skills training, work experience, job search, or employment.

(2) Education shall consist of the general education development program, high school, Adult Basic Education, English as a Second Language, postsecondary education, or other education programs approved in the contract.

(3) Job skills training shall include vocational training in technical job skills and equivalent knowledge. Activities shall consist of formalized, technical job skills training, apprenticeships, on-the-job training, or training in the operation of a microbusiness enterprise. The types of training, apprenticeships, or training positions may include, but need not be limited to, the ability to provide services such as home repairs, automobile repairs, respite care, foster care, personal care, and child care. Job skills training shall be prioritized and approved for occupations that facilitate economic self-sufficiency.

(4) The purpose of work experience shall be to improve the employability of applicants by providing work experience and training to assist them to move promptly into regular public or private employment. Work experience shall mean unpaid work in a public, private, for-profit, or nonprofit business or organization. Work experience placements shall take into account the individual's prior training, skills, and experience. A placement shall not exceed six months.

(5) Job search shall assist adult members of recipient families in finding their own jobs. The emphasis shall be placed on teaching the individual to take responsibility for his or her own job development and placement.

(6) Employment shall consist of work for pay. The employment may be full-time or part-time but shall be adequate to help the recipient family reach economic self-sufficiency.

Source: Laws 1994, LB 1224, § 21; Laws 1995, LB 455, § 14; Laws 2006, LB 994, § 78; Laws 2007, LB351, § 8.
Effective date September 1, 2007.

68-1722 Legislative findings; case management practices and supportive services; department; powers and duties; extension of time limit on cash assistance; when. The Legislature finds that the state has responsibilities to help ensure the success of the self-sufficiency contract for each recipient. The Department of Health and Human Services shall employ case management practices and supportive services to the extent necessary to facilitate movement toward self-sufficiency within the time limit on participation as provided in section 68-1724.

The department may purchase case management services. It is the intent of the Legislature that any case management utilized by the department shall include standards which emphasize communication skills; appropriate interviewing techniques; and methods for positive feedback, support, encouragement, and counseling. The case management provided shall also include a recognition of family dynamics and emphasize working with all family members; shall respect diversity; shall empower individuals; and shall include recognizing, capitalizing, and building on a family's strengths and existing support network. It is the intent of the Legislature that generally a case manager would have a family caseload of no more than seventy cases.

Supportive services shall include, but not be limited to, assistance with transportation expenses, participation and work expenses, parenting education, family planning, budgeting,

and relocation to provide for specific needs critical to the recipient's or the recipient family's self-sufficiency contract. For purposes of this section, family planning shall not include abortion counseling, referral for abortion, or funding for abortion. If the state fails to meet the specific terms of the self-sufficiency contract, the time limit on cash assistance under section 68-1724 shall be extended.

Source: Laws 1994, LB 1224, § 22; Laws 1996, LB 1044, § 361; Laws 2007, LB351, § 9.
Effective date September 1, 2007.

68-1723 Cash assistance; requirements; extension of time limit; when; hearing; review. (1) Cash assistance shall be provided only while recipients are actively engaged in the specific activities outlined in the self-sufficiency contract developed under section 68-1719. If the recipients are not actively engaged in these activities, no cash assistance shall be paid.

(2) Recipient families with at least one adult with the capacity to work, as determined by the comprehensive assets assessment, shall participate in the self-sufficiency contract as a condition of receiving cash assistance. If any such adult fails to cooperate in carrying out the terms of the contract, the family shall be ineligible for cash assistance.

(a) Adult members of recipient families whose youngest child is between the ages of twelve weeks and six months shall engage in an individually determined number of part-time hours in activities such as family nurturing, preemployment skills, or education.

(b) Participation in activities outlined in the self-sufficiency contract shall not be required for one parent of a recipient family whose youngest child is under the age of twelve weeks.

(c) Cash assistance under section 68-1724 shall be extended: (i) To cover the twelve-week postpartum recovery period for children born to recipient families; and (ii) to recognize special medical conditions of such children requiring the presence of at least one adult member of the recipient family, as determined by the state, which extend past the age of twelve weeks.

(d) Full participation in the activities outlined in the self-sufficiency contract shall be required for adult members of a two-parent recipient family whose youngest child is over the age of six months. Part-time participation in activities outlined in the self-sufficiency contract shall be required for an adult member of a single-parent recipient family whose youngest child is under the age of six years.

(e) In cases in which the only adults in the recipient family do not have parental responsibility which shall mean such adults are not the biological or adoptive parents or stepparents of the children in their care, and assistance is requested for all family members, including the adults, the family shall participate in the activities outlined in the self-sufficiency contract as a condition of receiving cash assistance.

(f) Unemployed or underemployed absent and able-to-work parents of children in the recipient family may participate in self-sufficiency contracts, employment, and payment of child support, and such absent parents may be required to pay all or a part of the costs of the self-sufficiency contracts.

(3) Individual recipients and recipient families shall have the right to request an administrative hearing (a) for the purpose of reviewing compliance by the state with the terms of the self-sufficiency contract or (b) for the purpose of reviewing a determination by the department that the recipient or recipient family has not complied with the terms of the self-sufficiency contract. It is the intent of the Legislature that an independent mediation appeal process be developed as an option to be considered.

Source: Laws 1994, LB 1224, § 23; Laws 2007, LB351, § 10.
Effective date September 1, 2007.

68-1724 Cash assistance; duration; reimbursement of expenses; when; conditions; extension of time limit. (1) Cash assistance shall be provided for a period or periods of time not to exceed a total of sixty months for recipient families with children subject to the following:

(a) If the state fails to meet the specific terms of the self-sufficiency contract developed under section 68-1719, the sixty-month time limit established in this section shall be extended;

(b) The sixty-month time period for cash assistance shall begin within the first month of eligibility;

(c) When no longer eligible to receive cash assistance, assistance shall be available to reimburse work-related child care expenses even if the recipient family has not achieved economic self-sufficiency. The amount of such assistance shall be based on a cost-shared plan between the recipient family and the state which shall provide assistance up to one hundred eighty-five percent of the federal poverty level for up to twenty-four months. A recipient family may be required to contribute up to twenty percent of such family's gross income for child care. It is the intent of the Legislature that transitional health care coverage be made available on a sliding-scale basis to individuals and families with incomes up to one hundred eighty-five percent of the federal poverty level if other health care coverage is not available; and

(d) The self-sufficiency contract shall be revised and cash assistance extended when there is no job available for adult members of the recipient family. It is the intent of the Legislature that available job shall mean a job which results in an income of at least equal to the amount of cash assistance that would have been available if receiving assistance minus unearned income available to the recipient family.

The department shall develop policy guidelines to allow for cash assistance to persons who have received the maximum cash assistance provided by this section and who face extreme hardship without additional assistance. For purposes of this section, extreme hardship means a recipient family does not have adequate cash resources to meet the costs of the basic needs of food, clothing, and housing without continuing assistance or the child or children are at risk of losing care by and residence with their parent or parents.

(2) Cash assistance conditions under the Welfare Reform Act shall be as follows:

(a) Adults in recipient families shall mean individuals at least nineteen years of age living with and related to a child eighteen years of age or younger and shall include parents, siblings,

uncles, aunts, cousins, or grandparents, whether the relationship is biological, adoptive, or step;

(b) The payment standard shall be based upon family size;

(c) The adults in the recipient family shall ensure that the minor children regularly attend school. Education is a valuable personal resource. The cash assistance provided to the recipient family may be reduced when the parent or parents have failed to take reasonable action to encourage the minor children of the recipient family ages sixteen and under to regularly attend school. No reduction of assistance shall be such as may result in extreme hardship. It is the intent of the Legislature that a process be developed to insure communication between the case manager, the parent or parents, and the school to address issues relating to school attendance;

(d) Two-parent families which would otherwise be eligible under section 43-504 or a federally approved waiver shall receive cash assistance under this section;

(e) For minor parents, the assistance payment shall be based on the minor parent's income. If the minor parent lives with at least one parent, the family's income shall be considered in determining eligibility and cash assistance payment levels for the minor parent. If the minor parent lives independently, support shall be pursued from the parents of the minor parent. If the absent parent of the minor's child is a minor, support from his or her parents shall be pursued. Support from parents as allowed under this subdivision shall not be pursued when the family income is less than three hundred percent of the federal poverty guidelines; and

(f) For adults who are not biological or adoptive parents or stepparents of the child or children in the family, if assistance is requested for the entire family, including the adults, a self-sufficiency contract shall be entered into as provided in section 68-1719. If assistance is requested for only the child or children in such a family, such children shall be eligible after consideration of the family's income and if (i) the family cooperates in pursuing child support and (ii) the minor children of the family regularly attend school.

Source: Laws 1994, LB 1224, § 24; Laws 1995, LB 455, § 15; Laws 2007, LB351, § 11.
Effective date September 1, 2007.

68-1729 Repealed. Laws 2007, LB 296, § 815.

68-1730 Repealed. Laws 2007, LB 296, § 815.

68-1732 Integrated programs and policies; legislative intent. It is the intent of the Legislature that the the Department of Health and Human Services, the State Department of Education, the Department of Labor, the Office of Probation Administration, the Department of Correctional Services, and the Department of Economic Development will have integrated programs and policies when serving a common customer. Organizational mergers and operating agreements shall be developed within state government which bring together the state's community-based child-serving and family-serving resources in the areas of health care services, social services, mental health services, developmental disabilities services, juvenile

justice, and education. Such actions shall eliminate the need for the public to understand the differing roles, responsibilities, and services of the agencies enumerated in this section and their affiliates.

Source: Laws 1994, LB 1224, § 32; Laws 1996, LB 1044, § 365; Laws 2007, LB296, § 291.
Operative date July 1, 2007.

ARTICLE 18

ICF/MR REIMBURSEMENT PROTECTION ACT

Section.

68-1802. Terms, defined.

68-1803. Tax; rate; collection; report.

68-1807. Failure to pay tax; penalty.

68-1802 Terms, defined. For purposes of the ICF/MR Reimbursement Protection Act:

(1) Department means the Department of Health and Human Services;

(2) Intermediate care facility for the mentally retarded has the definition found in section 71-421;

(3) Medical assistance program means the program established pursuant to the Medical Assistance Act; and

(4) Net revenue means the revenue paid to an intermediate care facility for the mentally retarded for resident care, room, board, and services less contractual adjustments and does not include revenue from sources other than operations, including, but not limited to, interest and guest meals.

Source: Laws 2004, LB 841, § 3; Laws 2006, LB 1248, § 72; Laws 2007, LB296, § 292.
Operative date July 1, 2007.

Cross Reference

Medical Assistance Act, see section 68-901.

68-1803 Tax; rate; collection; report. (1) Each intermediate care facility for the mentally retarded shall pay a tax equal to a percentage of its net revenue for the most recent State of Nebraska fiscal year. The percentage shall be (a) six percent prior to January 1, 2008, (b) five and one-half percent beginning January 1, 2008, through September 30, 2011, and (c) six percent beginning October 1, 2011.

(2) Taxes collected under this section shall be remitted to the State Treasurer for credit to the ICF/MR Reimbursement Protection Fund.

(3) Taxes collected pursuant to this section shall be reported on a separate line on the cost report of the intermediate care facility for the mentally retarded, regardless of how such costs are reported on any other cost report or income statement. The department shall recognize such tax as an allowable cost within the state plan for reimbursement of intermediate care facilities for the mentally retarded which participate in the medical assistance program. The tax shall be a direct pass-through and shall not be subject to cost limitations.

Source: Laws 2004, LB 841, § 4; Laws 2006, LB 1248, § 73; Laws 2007, LB292, § 2.
Effective date September 1, 2007.

68-1807 Failure to pay tax; penalty. (1) An intermediate care facility for the mentally retarded that fails to pay the tax required by section 68-1803 shall be subject to a penalty of five hundred dollars per day of delinquency. The total amount of the penalty assessed under this section shall not exceed five percent of the tax due from the intermediate care facility for the mentally retarded for the year for which the tax is assessed.

(2) The department shall collect the penalties and remit them to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2004, LB 841, § 8; Laws 2007, LB296, § 293.
Operative date July 1, 2007.

CHAPTER 69

PERSONAL PROPERTY

Article.

3. Mail Order Contact Lens Act. 69-302, 69-305.
24. Guns.
 - (c) Concealed Handgun Permit Act. 69-2429 to 69-2443.
27. Tobacco. 69-2706 to 69-2709.

ARTICLE 3

MAIL ORDER CONTACT LENS ACT

Section.

- 69-302. Terms, defined.
- 69-305. Fees; disposition.

69-302 Terms, defined. For purposes of the Mail Order Contact Lens Act:

(1) Contact lens prescription means a written order bearing the original signature of an optometrist or physician or an oral or electromagnetic order issued by an optometrist or physician that authorizes the dispensing of contact lenses to a patient and meets the requirements of section 69-303;

(2) Department means the Department of Health and Human Services;

(3) Mail-order ophthalmic provider means an entity that ships, mails, or in any manner delivers dispensed contact lenses to Nebraska residents;

(4) Optometrist means a person licensed to practice optometry pursuant to the Optometry Practice Act; and

(5) Physician means a person licensed to practice medicine and surgery pursuant to the Medicine and Surgery Practice Act.

Source: Laws 2001, LB 398, § 87; Laws 2007, LB296, § 294; Laws 2007, LB463, § 1176.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 294, with LB 463, section 1176, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Medicine and Surgery Practice Act, see section 38-2001.

Optometry Practice Act, see section 38-2601.

69-305 Fees; disposition. The mail-order ophthalmic provider shall pay a fee equivalent to the annual fee for an initial or renewal permit to operate a pharmacy in Nebraska as established in and at the times provided for in the Health Care Facility Licensure Act. Such fees shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund.

Source: Laws 2001, LB 398, § 90; Laws 2003, LB 242, § 12; Laws 2007, LB296, § 295.
Operative date July 1, 2007.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

ARTICLE 24

GUNS

(c) CONCEALED HANDGUN PERMIT ACT

Section.

69-2429. Terms, defined.

69-2436. Permit; period valid; fee; renewal; fee.

69-2441. Permitholder; locations; restrictions; posting of prohibition; consumption of alcohol; prohibited.

69-2443. Violations; penalties; revocation of permit.

(c) CONCEALED HANDGUN PERMIT ACT

69-2429 Terms, defined. For purposes of the Concealed Handgun Permit Act:

(1) Concealed handgun means the handgun is totally hidden from view. If any part of the handgun is capable of being seen, it is not a concealed handgun;

(2) Emergency services personnel means a volunteer or paid firefighter or rescue squad member or a person licensed to provide emergency medical services pursuant to the Emergency Medical Services Practice Act;

(3) Handgun means any firearm with a barrel less than sixteen inches in length or any firearm designed to be held and fired by the use of a single hand;

(4) Peace officer means any town marshal, chief of police or local police officer, sheriff or deputy sheriff, the Superintendent of Law Enforcement and Public Safety, any officer of the Nebraska State Patrol, any member of the National Guard on active service by direction of the Governor during periods of emergency or civil disorder, any Game and Parks Commission conservation officer, and all other persons with similar authority to make arrests;

(5) Permitholder means an individual holding a current and valid permit to carry a concealed handgun issued pursuant to the Concealed Handgun Permit Act; and

(6) Proof of training means an original document or certified copy of a document, supplied by an applicant, that certifies that he or she either:

(a) Within the previous three years, has successfully completed a handgun training and safety course approved by the Nebraska State Patrol pursuant to section 69-2432; or

(b) Is a member of the active or reserve armed forces of the United States or a member of the National Guard and has had handgun training within the previous three years which meets the minimum safety and training requirements of section 69-2432.

Source: Laws 2006, LB 454, § 3; Laws 2007, LB463, § 1177.
Operative date December 1, 2008.

Cross Reference

Emergency Medical Services Practice Act, see section 38-1201.

69-2436 Permit; period valid; fee; renewal; fee. (1) A permit to carry a concealed handgun is valid throughout the state for a period of five years after the date of issuance. The fee for issuing a permit is one hundred dollars.

(2) The Nebraska State Patrol shall renew a person's permit to carry a concealed handgun for a renewal period of five years, subject to continuing compliance with the requirements of section 69-2433. The renewal fee is fifty dollars, and renewal may be applied for up to four months before expiration of a permit to carry a concealed handgun.

(3) The applicant shall submit the fee with the application to the Nebraska State Patrol. The fee shall be remitted to the State Treasurer for credit to the Nebraska State Patrol Cash Fund.

(4) On or before June 30, 2007, the Nebraska State Patrol shall journal entry, as necessary, all current fiscal year expenses and revenue, including investment income, from the Public Safety Cash Fund under the Concealed Handgun Permit Act and recode them against the Nebraska State Patrol Cash Fund and its program appropriation.

Source: Laws 2006, LB 454, § 10; Laws 2007, LB322, § 17.
Operative date May 22, 2007.

69-2441 Permitholder; locations; restrictions; posting of prohibition; consumption of alcohol; prohibited. (1)(a) A permitholder may carry a concealed handgun anywhere in Nebraska, except any: Police, sheriff, or Nebraska State Patrol station or office; detention facility, prison, or jail; courtroom or building which contains a courtroom; polling place during a bona fide election; meeting of the governing body of a county, public school district, municipality, or other political subdivision; meeting of the Legislature or a committee of the Legislature; financial institution; professional or semiprofessional athletic event; building, grounds, vehicle, or sponsored activity or athletic event of any public, private, denominational, or parochial school or private or public university, college, or community college; place of worship; hospital, emergency room, or trauma center; political rally or fundraiser; establishment having a license issued under the Nebraska Liquor Control Act that derives over one-half of its total income from the sale of alcoholic liquor; place where the possession or carrying of a firearm is prohibited by state or federal law; a place or premises where the person, persons, entity, or entities in control of the property or employer in control of the property has prohibited permitholders from carrying concealed handguns into or onto the place or premises; or into or onto any other place or premises where handguns are prohibited by law or rule or regulation.

(b) A financial institution may authorize its security personnel to carry concealed handguns in the financial institution while on duty so long as each member of the security personnel, as authorized, is in compliance with the Concealed Handgun Permit Act and possesses a permit to carry a concealed handgun issued pursuant to the act.

(2) If a person, persons, entity, or entities in control of the property or an employer in control of the property prohibits a permitholder from carrying a concealed handgun into or onto the place or premises and such place or premises are open to the public, a permitholder does not violate this section unless the person, persons, entity, or entities in control of the property or employer in control of the property has posted conspicuous notice that carrying a concealed handgun is prohibited in or on the place or premises or has made a request, directly or through an authorized representative or management personnel, that the permitholder remove the concealed handgun from the place or premises. A permitholder carrying a concealed handgun in a vehicle into or onto any place or premises does not violate this section so long as the handgun is not removed from the vehicle while the vehicle is in or on the place or premises. An employer may prohibit employees or other persons who are permitholders from carrying concealed handguns in vehicles owned by the employer.

(3) A permitholder shall not carry a concealed handgun while he or she is consuming alcohol or while the permitholder has remaining in his or her blood, urine, or breath any previously consumed alcohol or any controlled substance as defined in section 28-401. A permitholder does not violate this subsection if the controlled substance in his or her blood, urine, or breath was lawfully obtained and was taken in therapeutically prescribed amounts.

Source: Laws 2006, LB 454, § 15; Laws 2007, LB97, § 1.
Effective date September 1, 2007.

Cross Reference

Nebraska Liquor Control Act, see section 53-101.

69-2443 Violations; penalties; revocation of permit. (1) A permitholder who violates subsection (1) or (2) of section 69-2440 or section 69-2441 or 69-2442 is guilty of a Class III misdemeanor for the first violation and a Class I misdemeanor for any second or subsequent violation.

(2) A permitholder who violates subsection (3) of section 69-2440 is guilty of a Class I misdemeanor.

(3) A permitholder convicted of a violation described in subsection (1) or (2) of this section may also have his or her permit revoked.

Source: Laws 2006, LB 454, § 17; Laws 2007, LB97, § 2.
Effective date September 1, 2007.

ARTICLE 27

TOBACCO

Section.

69-2706. Tobacco product manufacturer; certification; contents; Tax Commissioner; powers and duties; directory; prohibited acts.

69-2707. Nonresident or foreign nonparticipating manufacturer; agent for service of process.

- 69-2708. Stamping agent; duties; Tax Commissioner; Attorney General; powers; escrow deposits.
- 69-2709. Revocation or suspension of stamping agent license; civil penalty; contraband; actions to enjoin; criminal penalty; remedies cumulative.

69-2706 Tobacco product manufacturer; certification; contents; Tax Commissioner; powers and duties; directory; prohibited acts. (1)(a) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form prescribed by the Tax Commissioner a certification to the Tax Commissioner and the Attorney General no later than the thirtieth day of April each year, certifying under penalty of perjury that, as of the date of such certification, such tobacco product manufacturer either is a participating manufacturer or is in full compliance with subdivision (2) of section 69-2703, including all quarterly installment payments required by subsection (4) of section 69-2708.

(b) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update such list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Tax Commissioner and the Attorney General.

(c) A nonparticipating manufacturer shall include in its certification (i) a list of all of its brand families and the number of units sold for each brand family that were sold in the state during the preceding calendar year and (ii) a list of all of its brand families that have been sold in the state at any time during the current calendar year (A) indicating by an asterisk any brand family sold in the state during the preceding or current calendar year that is no longer being sold in the state as of the date of such certification and (B) identifying by name and address any other manufacturer of such brand families in the preceding calendar year. The nonparticipating manufacturer shall update such list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Tax Commissioner and the Attorney General.

(d) In the case of a nonparticipating manufacturer, such certification shall further certify:

(i) That such nonparticipating manufacturer is registered to do business in the state or has appointed an agent for service of process and provided notice thereof as required by section 69-2707;

(ii) That such nonparticipating manufacturer has established and continues to maintain a qualified escrow fund pursuant to a qualified escrow agreement that has been reviewed and approved by the Attorney General or has been submitted for review by the Attorney General;

(iii) That such nonparticipating manufacturer is in full compliance with subdivision (2) of section 69-2703 and this section and any rules and regulations adopted and promulgated pursuant thereto;

(iv)(A) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established such qualified escrow fund required pursuant to subdivision (2) of section 69-2703 and all rules and regulations adopted and promulgated pursuant thereto; (B) the account number of such qualified escrow fund and any subaccount number for the State of Nebraska; (C) the amount such nonparticipating manufacturer placed

in such fund for cigarettes sold in the state during the preceding calendar year, the dates and amount of each such deposit, and such evidence or verification as may be deemed necessary by the Attorney General to confirm the foregoing; and (D) the amounts and dates of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from such fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to subdivision (2) of section 69-2703 and all rules and regulations adopted and promulgated pursuant thereto; and

(v) That such nonparticipating manufacturer consents to be sued in the district courts of the State of Nebraska for purposes of the state (A) enforcing any provision of sections 69-2703 to 69-2710 and any rules and regulations adopted and promulgated thereunder or (B) bringing a released claim as defined in section 69-2702.

(e) A tobacco product manufacturer shall not include a brand family in its certification unless (i) in the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year in the volume and shares determined pursuant to the Master Settlement Agreement and (ii) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of subdivision (2) of section 69-2703. Nothing in this section shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of section 69-2703.

(f) Tobacco product manufacturers shall maintain all invoices and documentation of sales and other such information relied upon for such certification for a period of five years unless otherwise required by law to maintain them for a greater period of time.

(2) The Tax Commissioner shall develop, maintain, and make available for public inspection or publish on its web site a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of subsection (1) of this section and all brand families that are listed in such certifications except:

(a) The Tax Commissioner shall not include or retain in such directory the name or brand families of any tobacco product manufacturer that has failed to provide the required certification or whose certification the commissioner determines is not in compliance with subdivisions (1)(c) and (d) of this section unless the Tax Commissioner has determined that such violation has been cured to his or her satisfaction;

(b) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the Attorney General recommends and notifies the Tax Commissioner who concludes, in the case of a nonparticipating manufacturer, that (i) any escrow payment required pursuant to subdivision (2) of section 69-2703 or subsection (4) of section 69-2708 for any period for any brand family, whether or not listed by such nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified

escrow agreement that has been approved by the Attorney General or (ii) any outstanding final judgment, including interest thereon, for violations of section 69-2703 has not been fully satisfied for such brand family and such manufacturer;

(c) The Tax Commissioner shall update the directory no later than May 15 of each year to reflect certifications made on or before April 30 as required in subsection (1) of this section. The Tax Commissioner shall continuously update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of sections 69-2704 to 69-2710;

(d) The Tax Commissioner shall transmit by email or other practicable means to each stamping agent notice of any removal from the directory of any tobacco product manufacturer or brand family. Unless otherwise provided by agreement between the stamping agent and a tobacco product manufacturer, the stamping agent shall be entitled to a refund from a tobacco product manufacturer for any money paid by the stamping agent to the tobacco product manufacturer for any cigarettes of the tobacco product manufacturer still held by the stamping agent on the date of notice by the Tax Commissioner of the removal from the directory of that tobacco product manufacturer or the brand family or for any cigarettes returned to the stamping agent by its customers under subsection (2) of section 69-2709. The Tax Commissioner shall not restore to the directory the tobacco product manufacturer or the brand family until the tobacco product manufacturer has paid the stamping agent any refund due; and

(e) Every stamping agent shall provide and update as necessary an electronic mail address to the Tax Commissioner for the purpose of receiving any notifications as may be required by sections 69-2704 to 69-2710.

(3) The failure of the Tax Commissioner to provide notice of any intended removal from the directory as required under subdivision (2)(d) of this section or the failure of a stamping agent to receive such notice shall not relieve the stamping agent of its obligations under sections 69-2704 to 69-2710.

(4) It shall be unlawful for any person (a) to affix a Nebraska stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory or (b) to sell, offer, or possess for sale in this state cigarettes of a tobacco product manufacturer or brand family in this state not included in the directory.

Source: Laws 2003, LB 572, § 3; Laws 2007, LB580, § 1.
Effective date September 1, 2007.

69-2707 Nonresident or foreign nonparticipating manufacturer; agent for service of process. (1) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the directory created in subsection (2) of section 69-2706, appoint and continually engage without interruption the services of an agent in the United States to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of sections 69-2703 to 69-2710, may be served in any manner authorized by law. Such service

shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, telephone number, and proof of the appointment and availability of such agent to the Tax Commissioner and Attorney General.

(2) The nonparticipating manufacturer shall provide notice to the Tax Commissioner and Attorney General thirty calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the Attorney General of the appointment of a new agent no less than five calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the Tax Commissioner and Attorney General of the termination within five calendar days and shall include proof to the satisfaction of the Attorney General of the appointment of a new agent.

(3) Any nonparticipating manufacturer whose products are sold in this state who has not appointed and engaged the services of an agent as required by this section shall be deemed to have appointed the Secretary of State as its agent for service of process. The appointment of the Secretary of State as agent shall not satisfy the condition precedent required in subsection (1) of this section to have the nonparticipating manufacturer's brand families included or retained in the directory.

Source: Laws 2003, LB 572, § 4; Laws 2007, LB580, § 2.
Effective date September 1, 2007.

69-2708 Stamping agent; duties; Tax Commissioner; Attorney General; powers; escrow deposits. (1) Not later than twenty calendar days after the end of each calendar quarter, and more frequently if so directed by the Tax Commissioner, each stamping agent shall submit such information as the Tax Commissioner requires to facilitate compliance with sections 69-2704 to 69-2710, including, but not limited to, a list by brand family of the total number of cigarettes or, in the case of roll-your-own, the equivalent stick count for which the stamping agent affixed stamps during the previous calendar quarter or otherwise paid the tax due for such cigarettes. The stamping agent shall maintain, and make available to the Tax Commissioner, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the Tax Commissioner for a period of five years.

(2) The Attorney General may require at any time from the nonparticipating manufacturer proof, from the financial institution in which such manufacturer has established a qualified escrow fund for the purpose of compliance with section 69-2703, of the amount of money in such fund, exclusive of interest, the amounts and dates of each deposit to such fund, and the amounts and dates of each withdrawal from such fund.

(3) In addition to the information required to be submitted pursuant to subsection (1) of this section, the Tax Commissioner or Attorney General may require a stamping agent, distributor, or tobacco product manufacturer to submit any additional information, including, but not

limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the Tax Commissioner or Attorney General to determine whether a tobacco product manufacturer is in compliance with sections 69-2704 to 69-2710.

(4) To promote compliance with sections 69-2704 to 69-2707, a tobacco product manufacturer subject to the requirements of subdivision (1)(c) of section 69-2706 shall make the escrow deposits required by section 69-2703 in quarterly installments during the year in which the sales covered by such deposits are made: (a) Through the end of the calendar year following the year the tobacco product manufacturer is listed in the directory established pursuant to section 69-2706; (b) if the tobacco product manufacturer is removed from, then subsequently relisted in, the directory, then for all periods following the relisting through the end of the calendar year following the year the tobacco product manufacturer is relisted in the directory; (c) if the tobacco product manufacturer has failed to make a complete and timely escrow deposit for any calendar year as required by section 69-2703 or for any quarter as required in this section; or (d) if the tobacco product manufacturer has failed to pay any judgment, including any civil penalty ordered under section 69-2703 or 69-2709. The Tax Commissioner may require production of information sufficient to enable the Tax Commissioner to determine the adequacy of the amount of the installment deposit. The Tax Commissioner may adopt and promulgate rules and regulations implementing how tobacco product manufacturers subject to the requirements of subdivision (1)(c) of section 69-2706 make quarterly payments.

Source: Laws 2003, LB 572, § 5; Laws 2007, LB580, § 3.
Effective date September 1, 2007.

69-2709 Revocation or suspension of stamping agent license; civil penalty; contraband; actions to enjoin; criminal penalty; remedies cumulative. (1) In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a stamping agent has violated subsection (4) of section 69-2706 or any rule or regulation adopted and promulgated pursuant thereto, the Tax Commissioner may revoke or suspend the license of any stamping agent in the manner provided by section 77-2615.01. For each violation hereof, the Tax Commissioner may also impose a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes or five thousand dollars upon a determination of violation of subsection (4) of section 69-2706 or any rules or regulations adopted and promulgated pursuant thereto. Such penalty shall be imposed in the manner provided by section 77-2615.01.

(2) Any cigarettes that have been sold, offered for sale, or possessed for sale in this state in violation of subsection (4) of section 69-2706 shall be deemed contraband under section 77-2620 and such cigarettes shall be subject to seizure and forfeiture as provided in section 77-2620, except that all such cigarettes so seized and forfeited shall be destroyed and not resold. The stamping agent shall notify its customers for a brand family with regard to any notice of removal of a tobacco product manufacturer or a brand family from the directory and give its customers a seven-day period for the return of cigarettes that become contraband.

(3) The Attorney General, on behalf of the Tax Commissioner, may seek an injunction to restrain a threatened or actual violation of subsection (4) of section 69-2706 or subsection (1) or (4) of section 69-2708 by a stamping agent and to compel the stamping agent to comply with any of such subsections. In any action brought pursuant to this section, the state shall be entitled to recover the costs of investigation, costs of the action, and reasonable attorney's fees.

(4) It is unlawful for a person to (a) sell or distribute cigarettes for sale in this state or (b) acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of subsection (4) of section 69-2706. A violation of this section is a Class III misdemeanor.

(5) If a court determines that a person has violated any portion of sections 69-2704 to 69-2710, the court shall order the payment of any profits, gains, gross receipts, or other benefits from the violation to be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. Unless otherwise expressly provided, the remedies or penalties provided by sections 69-2704 to 69-2710 are cumulative to each other and to the remedies or penalties available under all applicable laws of this state.

Source: Laws 2003, LB 572, § 6; Laws 2007, LB580, § 4.
Effective date September 1, 2007.

CHAPTER 70

POWER DISTRICTS AND CORPORATIONS

Article.

- 6. Public Power and Irrigation Districts. 70-637.
- 19. Rural Community-Based Energy Development Act. 70-1901 to 70-1909.

ARTICLE 6

PUBLIC POWER AND IRRIGATION DISTRICTS

Section.

70-637. Construction, repairs, and improvements; contracts; sealed bids; exceptions; notice; when.

70-637 Construction, repairs, and improvements; contracts; sealed bids; exceptions; notice; when. (1) A district shall cause estimates of the costs to be made by some competent engineer or engineers before the district enters into any contract for:

(a) The construction, reconstruction, remodeling, building, alteration, maintenance, repair, extension, or improvement, for the use of the district, of any:

(i) Power plant or system;

(ii) Hydrogen production, storage, or distribution system;

(iii) Ethanol production or distribution system;

(iv) Irrigation works; or

(v) Part or section of a system or works described in subdivisions (i) through (iv) of this subdivision; or

(b) The purchase of any materials, machinery, or apparatus to be used in the projects described in subdivision (1)(a) of this section.

(2) If the estimated cost exceeds the sum of one hundred thousand dollars, no such contract shall be entered into without advertising for sealed bids.

(3) Notwithstanding the provisions of subsection (2) of this section and sections 70-638 and 70-639, the board of directors of the district may negotiate directly with sheltered workshops pursuant to section 48-1503.

(4)(a) The provisions of subsection (2) of this section and sections 70-638 and 70-639 relating to sealed bids shall not apply to contracts entered into by a district in the exercise of its rights and powers relating to (i) radioactive material or the energy therefrom, (ii) any technologically complex or unique equipment, (iii) equipment or supplemental labor procurement from an electric utility or from or through an electric utility alliance, or (iv) any maintenance or repair, if the requirements of subdivisions (b) and (c) of this subsection are met.

(b) A contract described in subdivision (a) of this subsection need not comply with subsection (2) of this section or section 70-638 or 70-639 if:

(i) The engineer or engineers certify that, by reason of the nature of the subject matter of the contract, compliance with subsection (2) of this section would be impractical or not in the public interest;

(ii) The engineer's certification is approved by a two-thirds vote of the board; and

(iii) The district advertises notice of its intention to enter into such contract, the general nature of the proposed work, and the name of the person to be contacted for additional information by anyone interested in contracting for such work.

(c) Any contract for which the board has approved an engineer's certificate described in subdivision (b) of this subsection shall be advertised in three issues not less than seven days between issues in one or more newspapers of general circulation in the district and in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of its intention to enter into such contract, and any such contract shall not be entered into prior to twenty days after the last advertisement.

(5) The provisions of subsection (2) of this section and sections 70-638 and 70-639 shall not apply to contracts in excess of one hundred thousand dollars entered into for the purchase of any materials, machinery, or apparatus to be used in projects described in subdivision (1)(a) of this section when the contract does not include onsite labor for the installation thereof if, after advertising for sealed bids:

(a) No responsive bids are received; or

(b) The board of directors of such district determines that all bids received are in excess of the fair market value of the subject matter of such bids.

(6) Notwithstanding any other provision of subsection (2) of this section or sections 70-638 and 70-639, a district may, without advertising or sealed bidding, purchase replacement parts or services relating to such replacement parts for any generating unit, transformer, or other transmission and distribution equipment from the original manufacturer of such equipment upon certification by an engineer or engineers that such manufacturer is the only available source of supply for such replacement parts or services and that such purchase is in compliance with standards established by the board. A written statement containing such certification and a description of the resulting purchase of replacement parts or services from the original manufacturer shall be submitted to the board by the engineer or engineers certifying the purchase for the board's approval. After such certification, but not necessarily before the board review, notice of any such purchase shall be published once a week for at least three consecutive weeks in one or more newspapers of general circulation in the district and published in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of such purchase.

(7) Notwithstanding any other provision of subsection (2) of this section or sections 70-638 and 70-639, a district may, without advertising or sealed bidding, purchase used equipment and materials on a negotiated basis upon certification by an engineer that such equipment is or such materials are in compliance with standards established by the board. A written statement

containing such certification shall be submitted to the board by the engineer for the board's approval.

Source: Laws 1933, c. 86, § 10, p. 351; C.S.Supp., 1941, § 70-710; Laws 1943, c. 146, § 4, p. 523; R.S. 1943, § 70-637; Laws 1955, c. 268, § 1, p. 847; Laws 1959, c. 316, § 6, p. 1161; Laws 1967, c. 423, § 1, p. 1299; Laws 1975, LB 63, § 1; Laws 1981, LB 34, § 2; Laws 1984, LB 152, § 1; Laws 1984, LB 540, § 11; Laws 1986, LB 1230, § 45; Laws 1998, LB 1129, § 2; Laws 1999, LB 566, § 2; Laws 2005, LB 139, § 14; Laws 2007, LB636, § 6.
Effective date September 1, 2007.

ARTICLE 19

RURAL COMMUNITY-BASED ENERGY DEVELOPMENT ACT

Section.

70-1901. Act, how cited.

70-1902. Legislative intent.

70-1903. Terms, defined.

70-1904. C-BED project developer; electric utility; negotiation; power purchase agreement; development of project; restriction on transfer; eligibility for net energy billing; approval or certification.

70-1905. Electric utility; duties.

70-1906. Construction of new renewable generation facilities; electric utility; governing body; duties.

70-1907. C-BED project developer; provide investment opportunity to property owner.

70-1908. Sections; how construed.

70-1909. Electric supplier; limit on eminent domain.

70-1901 Act, how cited. Sections 70-1901 to 70-1909 shall be known and may be cited as the Rural Community-Based Energy Development Act.

Source: Laws 2007, LB629, § 1.
Effective date May 22, 2007.

70-1902 Legislative intent. It is the intent of the Legislature to create new rural economic development opportunities through rural community-based energy development.

Source: Laws 2007, LB629, § 2.
Effective date May 22, 2007.

70-1903 Terms, defined. For purposes of the Rural Community-Based Energy Development Act:

(1) C-BED project or community-based energy development project means a new wind energy project that:

(a) Has an ownership structure as follows:

(i) For a C-BED project that consists of more than two turbines, is owned by qualified owners with no single qualified owner owning more than fifteen percent of the project and with at least thirty-three percent of the power purchase agreement payments flowing to the qualified owner or owners or local community; or

(ii) For a C-BED project that consists of one or two turbines, is owned by one or more qualified owners with at least thirty-three percent of the power purchase agreement payments flowing to a qualified owner or local community; and

(b) Has a resolution of support adopted:

(i) By the county board of each county in which the C-BED project is to be located; or

(ii) By the tribal council for a C-BED project located within the boundaries of an Indian reservation;

(2) Electric utility means an electric supplier that:

(a) Owns more than one hundred miles of one-hundred-fifteen-kilovolt or larger transmission lines in the State of Nebraska;

(b) Owns more than two hundred megawatts of electric generating facilities; and

(c) Has the obligation to directly serve more than two hundred megawatts of wholesale or retail electric load in the State of Nebraska; and

(3) Qualified owner means:

(a) A Nebraska resident;

(b) A limited liability company that is organized under the Limited Liability Company Act and that is made up of members who are Nebraska residents;

(c) A Nebraska nonprofit corporation organized under the Nebraska Nonprofit Corporation Act;

(d) An electric supplier as defined in section 70-1001.01, except that ownership in a single C-BED project is limited to no more than:

(i) Fifteen percent by a single electric supplier; and

(ii) A combined total of twenty-five percent ownership by multiple electric suppliers; or

(e) A tribal council.

Source: Laws 2007, LB629, § 3.
Effective date May 22, 2007.

Cross Reference

Limited Liability Company Act, see section 21-2601.

Nebraska Nonprofit Corporation Act, see section 21-1901.

70-1904 C-BED project developer; electric utility; negotiation; power purchase agreement; development of project; restriction on transfer; eligibility for net energy billing; approval or certification. (1) A C-BED project developer and an electric utility are authorized to negotiate in good faith mutually agreeable power purchase agreement terms.

(2) A qualified owner or any combination of qualified owners may develop a C-BED project with an equity partner that is not a qualified owner, if not more than sixty-seven percent of the power purchase agreement payments flow to the nonqualified owners.

(3) Except for an inherited interest, the transfer of a C-BED project to any person other than a qualified owner is prohibited during the initial ten years of the power purchase agreement.

(4) A C-BED project that is operating under a power purchase agreement is not eligible for any applicable net energy billing.

(5) A C-BED project shall be subject to approval by the Nebraska Power Review Board in accordance with Chapter 70, article 10, or shall receive certification as a qualifying facility in accordance with the federal Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 et seq., with written notice of such certification provided to the Nebraska Power Review Board.

Source: Laws 2007, LB629, § 4.
Effective date May 22, 2007.

70-1905 Electric utility; duties. An electric utility shall:

(1) Consider mechanisms to encourage the aggregation of C-BED projects located in the same general geographical area;

(2) Require any qualified owner to provide sufficient security to assure performance under the power purchase agreement; and

(3) Annually prepare a statement summarizing its efforts to purchase energy from C-BED projects, including a list of the C-BED projects under a power purchase agreement and the amount of C-BED project energy purchased.

Source: Laws 2007, LB629, § 5.
Effective date May 22, 2007.

70-1906 Construction of new renewable generation facilities; electric utility; governing body; duties. The governing body of an electric utility that has determined a need to construct new renewable generation facilities shall take reasonable steps to determine if one or more C-BED projects are available and are technically, economically, and operationally feasible to provide some or all of the identified generation need.

Source: Laws 2007, LB629, § 6.
Effective date May 22, 2007.

70-1907 C-BED project developer; provide investment opportunity to property owner. To the extent feasible, a C-BED project developer shall provide, in writing, an opportunity to invest in the C-BED project to each property owner on whose property a turbine is located.

Source: Laws 2007, LB629, § 7.
Effective date May 22, 2007.

70-1908 Sections; how construed. Nothing in sections 70-1901 to 70-1907 shall be construed to obligate an electric utility to enter into a power purchase agreement under a C-BED project.

Source: Laws 2007, LB629, § 8.
Effective date May 22, 2007.

70-1909 Electric supplier; limit on eminent domain. An electric supplier as defined in section 70-1001.01 may agree to limit its exercise of the power of eminent domain to acquire a C-BED project which is a renewable energy generation facility producing electricity

with wind and any related facilities if such electric supplier enters into a contract to purchase output from such facility for a term of ten years or more.

Source: Laws 2007, LB629, § 9.
Effective date May 22, 2007.

CHAPTER 71

PUBLIC HEALTH AND WELFARE

Article.

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ARTICLE 1

LICENSES; PROFESSIONAL AND OCCUPATIONAL

(a) DEFINITIONS

Section.

- 71-101. Law, how cited; terms, defined.
- 71-101.01. Repealed. Laws 2007, LB 463, § 1319.

(b) LICENSES AND CERTIFICATES

- 71-102. Practices; license or certificate required.
- 71-103. Transferred to section 38-129.
- 71-104. License, certificate, or registration; grounds for refusal.
- 71-104.01. Criminal background check; when required.
- 71-105. Credential; form; how executed.
- 71-106. Repealed. Laws 2007, LB 463, § 1319.
- 71-107. Credential; availability; use of terms.
- 71-108. Transferred to section 38-130.
- 71-110. Credential; expiration date; renewal; reinstatement; fee; lapse; inactive status.
- 71-110.01. Transferred to section 38-143.

(c) PROFESSIONAL BOARDS

- 71-111. Transferred to section 38-158.
- 71-112. Professional boards; designated; change in name; effect.
- 71-112.01. Repealed. Laws 2007, LB 463, § 1319.
- 71-112.03. Transferred to section 38-161.
- 71-113. Transferred to section 38-162.
- 71-114. Transferred to section 38-164.
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- 71-116. Transferred to section 38-163.
- 71-117. Transferred to section 38-159.
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- 71-119. Repealed. Laws 2007, LB 463, § 1319.

- 71-120. Transferred to section 38-169.
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- 71-121.01. Department; responsibilities; costs; how paid.
- 71-122. Transferred to section 38-171.
- 71-123. Repealed. Laws 2007, LB 463, § 1319.
- 71-124. Transferred to section 38-172.
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(d) EXAMINATIONS

- 71-125. Transferred to section 38-132.
- 71-128. Transferred to section 38-133.
- 71-129. Transferred to section 38-135.
- 71-131. Examinations; grading; reexaminations.
- 71-132. Repealed. Laws 2007, LB 463, § 1319.
- 71-133. Transferred to section 38-134.
- 71-138. Transferred to section 38-137.

(e) RECIPROCAL LICENSES AND CERTIFICATES

- 71-139. Reciprocal licenses, certificates, or registrations; in general; credentials required.
- 71-139.01. Repealed. Laws 2007, LB 463, § 1319.
- 71-139.02. Repealed. Laws 2007, LB 463, § 1319.
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- 71-141. Reciprocal licenses or certificates; standards of other states; how ascertained.
- 71-142. Reciprocal licenses or certificates; retaliatory refusal of admission; power of department.
- 71-143. Repealed. Laws 2007, LB 463, § 1319.
- 71-144. Repealed. Laws 2007, LB 463, § 1319.
- 71-145. Transferred to section 38-125.

(f) REVOCATION OF LICENSES AND CERTIFICATES

- 71-147. Transferred to section 38-178.
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- 71-147.02. Transferred to section 38-183.
- 71-148. Transferred to section 38-179.
- 71-149. Transferred to section 38-144.
- 71-150. License, certificate, or registration; director; jurisdiction; denial; refuse renewal; discipline; procedure.
- 71-151. License, certificate, or registration; revocation or suspension; duties of Attorney General and county attorney.
- 71-152. Transferred to section 38-187.
- 71-153. License, certificate, or registration; discipline; hearing; time; place.
- 71-154. Transferred to section 38-189.
- 71-155. Credential; disciplinary action; proceedings; hearing; how conducted; director; powers; order; effect.

- 71-155.01. Contested cases; chief medical officer; duties.
- 71-155.03. Transferred to section 38-198.
- 71-156. License, certificate, or registration; revocation, suspension, or other disciplinary action; hearing; failure to appear; effect.
- 71-157. Transferred to section 38-194.
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- 71-159. Transferred to section 38-1,102.
- 71-160. Repealed. Laws 2007, LB 463, § 1319.
- 71-161.01. Transferred to section 38-177.
- 71-161.02. Licensee, certificate holder, or registrant; probation; conditions.
- 71-161.03. Petition for disciplinary action; disposition prior to order; methods; Attorney General; duties.
- 71-161.04. Transferred to section 38-148.
- 71-161.05. Repealed. Laws 2007, LB 463, § 1319.
- 71-161.06. Petition for reinstatement of license, certificate, or registration; when considered and acted upon; hearing; when allowed; procedure.
- 71-161.07. Disciplinary actions; recommendation by professional board; appeal.
- 71-161.09. Transferred to section 38-145.
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- 71-161.13. Complaint alleging dependence or disability; director; investigation; report; review by professional board; finding; effect.
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- 71-161.15. Transferred to section 38-1,112.
- 71-161.16. Disciplinary action; appeal.
- 71-161.17. Licensee, certificate holder, or registrant; mentally ill; automatic suspension; copy of determination of mental illness; termination of suspension; when.
- 71-161.18. Repealed. Laws 2007, LB 463, § 1319.
- 71-161.19. Transferred to section 38-173.
- 71-161.20. Reinstatement; application; supporting documents; director; powers and duties.

(g) FEES

- 71-162. Credentialing system; administrative costs; how paid.
- 71-162.01. Transferred to section 38-152.
- 71-162.02. Transferred to section 38-153.
- 71-162.03. Transferred to section 38-154.
- 71-162.04. Transferred to section 38-155.
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- 71-163. Transferred to section 38-157.

(h) VIOLATIONS, CRIMES, PUNISHMENT

- 71-164. Transferred to section 38-1,114.
- 71-164.01. Transferred to section 38-1,116.
- 71-165. Filing false documents with department; forgery; penalty.

- 71-166. Transferred to section 38-1,117.
- 71-167. Transferred to section 38-1,118.

(i) ENFORCEMENT PROVISIONS

- 71-168. Enforcement; investigations; violations; credentialed person; duty to report; cease and desist order; violation; penalty; loss or theft of controlled substance; duty to report; confidentiality; immunity.
- 71-168.01. Transferred to section 38-1,138.
- 71-168.02. Transferred to section 38-1,127.
- 71-169. Rules and regulations; department; adopt.
- 71-170. Transferred to section 38-127.
- 71-171. Transferred to section 38-1,139.
- 71-171.01. Transferred to section 38-1,107.
- 71-171.02. Transferred to section 38-1,108.
- 71-172. Repealed. Laws 2007, LB 463, § 1319.

(j) LICENSEE ASSISTANCE PROGRAM

- 71-172.01. Licensee Assistance Program; authorized; participation; immunity from liability; referral; limitation.
- 71-172.02. Fee; Licensee Assistance Cash Fund; created; use; investment.

(k) PRACTICE OF PODIATRY

- 71-173. Transferred to section 38-3006.
- 71-174. Transferred to section 38-3007.
- 71-174.01. Repealed. Laws 2007, LB 463, § 1319.
- 71-174.02. Transferred to section 38-3011.
- 71-175. Transferred to section 38-3008.
- 71-175.01. Repealed. Laws 2007, LB 463, § 1319.
- 71-176. Transferred to section 38-3010.
- 71-176.01. Transferred to section 38-3012.
- 71-176.03. Repealed. Laws 2007, LB 463, § 1319.

(l) PRACTICE OF CHIROPRACTIC

- 71-177. Transferred to section 38-805.
- 71-178. Transferred to section 38-806.
- 71-179. Transferred to section 38-807.
- 71-179.01. Repealed. Laws 2007, LB 463, § 1319.
- 71-180. Transferred to section 38-803.
- 71-181. Reciprocal licensing; when authorized.
- 71-182. Transferred to section 38-811.

(m) PRACTICE OF DENTISTRY

- 71-183. Transferred to section 38-1115.
- 71-183.01. Transferred to section 38-1116.
- 71-183.02. Transferred to section 38-1107.

- 71-184. Repealed. Laws 2007, LB 463, § 1319.
- 71-185. Transferred to section 38-1117.
- 71-185.01. Transferred to section 38-1125.
- 71-185.02. Transferred to section 38-1123.
- 71-185.03. Transferred to section 38-1124.
- 71-186. Repealed. Laws 2007, LB 463, § 1319.
- 71-188. Dentists; change of address; notice to department.
- 71-189. Transferred to section 38-1127.
- 71-190. Transferred to section 38-1128.
- 71-191. Transferred to section 38-1129.
- 71-193.01. Office of Oral Health and Dentistry; Dental Health Director; appointment.
- 71-193.02. Transferred to section 38-1150.
- 71-193.03. Transferred to section 38-1151.
- 71-193.04. Transferred to section 38-1118.
- 71-193.05. Repealed. Laws 2007, LB 463, § 1319.
- 71-193.13. Dental assistants; employment; duties performed.
- 71-193.14. Transferred to section 38-1136.
- 71-193.15. Licensed dental hygienist; functions authorized; when.
- 71-193.16. Repealed. Laws 2007, LB 463, § 1319.
- 71-193.17. Licensed dental hygienist; procedures and functions authorized; enumerated.
- 71-193.18. Licensed dental hygienist; monitor analgesia; administer local anesthesia; when.
- 71-193.19. Department; additional procedures; rules and regulations.
- 71-193.20. Transferred to section 38-1134.
- 71-193.21. Repealed. Laws 2007, LB 463, § 1319.
- 71-193.22. Terms, defined.
- 71-193.23. Transferred to section 38-1137.
- 71-193.24. Repealed. Laws 2007, LB 463, § 1319.
- 71-193.25. Transferred to section 38-1138.
- 71-193.26. Transferred to section 38-1139.
- 71-193.27. Transferred to section 38-1140.
- 71-193.28. Transferred to section 38-1142.
- 71-193.29. Transferred to section 38-1141.
- 71-193.30. Transferred to section 38-1144.
- 71-193.31. Transferred to section 38-1145.
- 71-193.32. Transferred to section 38-1146.
- 71-193.33. Transferred to section 38-1143.
- 71-193.34. Transferred to section 38-1147.
- 71-193.35. Transferred to section 38-1148.

(o) PRACTICE OF MEDICINE AND SURGERY

- 71-1,102. Transferred to section 38-2024.
- 71-1,103. Transferred to section 38-2025.

- 71-1,104. Medicine and surgery; license; qualifications; foreign medical graduates; waiver; requirements; department; powers.
- 71-1,104.01. Physician; genetic tests; written informed consent; requirements; department; duty.
- 71-1,104.06. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,105. Transferred to section 38-2004.
- 71-1,106. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,106.01. Medicine and surgery; examination; retaking examination; time.
- 71-1,107. Medicine and surgery; examination; waiver; when authorized; fee.
- 71-1,107.01. Transferred to section 38-2002.
- 71-1,107.02. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,107.03. Transferred to section 38-2038.
- 71-1,107.04. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,107.05. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,107.06. Temporary educational or visiting faculty permit; duration; renewal.
- 71-1,107.07. Temporary educational permit; application; designate educational program.
- 71-1,107.08. Visiting faculty permit; application; contents.
- 71-1,107.09. Transferred to section 38-2041.
- 71-1,107.10. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,107.11. Transferred to section 38-2043.
- 71-1,107.12. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,107.13. Transferred to section 38-2044.
- 71-1,107.14. Transferred to section 38-2045.
- 71-1,107.15. Transferred to section 38-2046.
- 71-1,107.16. Physician assistants; terms, defined.
- 71-1,107.17. Transferred to section 38-2047.
- 71-1,107.18. Transferred to section 38-2048.
- 71-1,107.19. Transferred to section 38-2049.
- 71-1,107.20. Transferred to section 38-2050.
- 71-1,107.21. Transferred to section 38-2052.
- 71-1,107.23. Transferred to section 38-2051.
- 71-1,107.24. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,107.25. Transferred to section 38-2056.
- 71-1,107.26. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,107.27. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,107.28. Transferred to section 38-2053.
- 71-1,107.29. Transferred to section 38-2054.
- 71-1,107.30. Transferred to section 38-2055.

(p) PRACTICE OF NURSING

- 71-1,132.01. Transferred to section 38-2201.
- 71-1,132.04. Transferred to section 38-2217.

- 71-1,132.05. Nursing; terms, defined.
- 71-1,132.06. Transferred to section 38-2218.
- 71-1,132.07. Transferred to section 38-2213.
- 71-1,132.08. Transferred to section 38-2214.
- 71-1,132.09. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,132.10. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,132.11. Transferred to section 38-2216.
- 71-1,132.12. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,132.13. Transferred to section 38-2220.
- 71-1,132.14. Transferred to section 38-2222.
- 71-1,132.15. Transferred to section 38-2223.
- 71-1,132.16. Transferred to section 38-2225.
- 71-1,132.17. Transferred to section 38-2228.
- 71-1,132.18. Transferred to section 38-2229.
- 71-1,132.19. Transferred to section 38-2224.
- 71-1,132.20. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,132.21. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,132.24. Transferred to section 38-2232.
- 71-1,132.25. Transferred to section 38-2233.
- 71-1,132.26. Transferred to section 38-2234.
- 71-1,132.27. Transferred to section 38-2235.
- 71-1,132.28. Transferred to section 38-2236.
- 71-1,132.29. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,132.30. Transferred to section 38-2219.
- 71-1,132.31. Transferred to section 38-2215.
- 71-1,132.35. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,132.36. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,132.37. Transferred to section 38-2221.
- 71-1,132.38. Transferred to section 38-2231.
- 71-1,132.41. Transferred to section 38-2230.
- 71-1,132.48. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,132.53. Nursing; department; powers and duties.

(q) PRACTICE OF OPTOMETRY

- 71-1,133. Practice of optometry, defined.
- 71-1,134. Practice of optometry; sections, how construed.
- 71-1,135. Optometry; license; requirements.
- 71-1,135.01. Transferred to section 38-2604.
- 71-1,135.02. Optometrist; pharmaceutical agents; use; certification; treatment of glaucoma.
- 71-1,135.03. Repealed. Laws 2007, LB 236, § 47.
- 71-1,135.04. License; renewal; statement as to use of pharmaceutical agents.
- 71-1,135.05. Repealed. Laws 2007, LB 236, § 47.

- 71-1,135.06. Use of pharmaceutical agents by licensed optometrist; standard of care.
- 71-1,135.07. Transferred to section 38-2618.
- 71-1,136. Optometry; approved schools; requirements.
- 71-1,136.01. Optometry; license; renewal; continuing competency requirements.
- 71-1,136.03. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,136.04. Optometry; patient's freedom of choice.
- 71-1,136.05. Transferred to section 38-2620.
- 71-1,136.06. Transferred to section 38-2621.
- 71-1,136.07. Transferred to section 38-2622.
- 71-1,136.08. Transferred to section 38-2623.
- 71-1,136.09. Repealed. Laws 2007, LB 463, § 1319.

(r) PRACTICE OF OSTEOPATHY

- 71-1,137. Transferred to section 38-2029.
- 71-1,138. Transferred to section 38-2030.
- 71-1,139. Transferred to section 38-2031.
- 71-1,139.01. Transferred to section 38-2032.
- 71-1,140. Transferred to section 38-2005.
- 71-1,141. Osteopathic physician; license; scope.

(s) PRACTICE OF PHARMACY

- 71-1,142. Terms, defined.
- 71-1,143. Transferred to section 38-2850.
- 71-1,143.01. Pharmacist; license; requirements.
- 71-1,143.02. Transferred to section 38-2853.
- 71-1,143.03. Transferred to section 38-2866.
- 71-1,144. Transferred to section 38-2854.
- 71-1,144.01. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,146. Transferred to section 38-2804.
- 71-1,146.01. Transferred to section 38-2870.
- 71-1,146.02. Transferred to section 38-2871.
- 71-1,147. Pharmacy; scope of practice; prohibited acts; violation; penalty.
- 71-1,147.13. Transferred to section 38-28,103.
- 71-1,147.15. Transferred to section 38-28,102.
- 71-1,147.16. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,147.17. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,147.18. Transferred to section 38-2846.
- 71-1,147.19. Transferred to section 38-2824.
- 71-1,147.20. Transferred to section 38-2803.
- 71-1,147.21. Transferred to section 38-2805.
- 71-1,147.22. Transferred to section 38-2855.

- 71-1,147.23. Transferred to section 38-2856.
- 71-1,147.24. Transferred to section 38-2857.
- 71-1,147.25. Transferred to section 38-2858.
- 71-1,147.26. Temporary educational permit; period valid; renewal.
- 71-1,147.27. Transferred to section 38-2860.
- 71-1,147.28. Temporary educational permit; serve in approved program; application; contents.
- 71-1,147.29. Transferred to section 38-2862.
- 71-1,147.30. Transferred to section 38-2863.
- 71-1,147.31. Temporary educational permit; disciplinary actions; appeal.
- 71-1,147.32. Transferred to section 38-2865.
- 71-1,147.33. Repealed. Laws 2007, LB 236, § 47.
- 71-1,147.34. Repealed. Laws 2007, LB 236, § 47.
- 71-1,147.35. Prospective drug utilization review; counseling; requirements.
- 71-1,147.36. Transferred to section 38-2868.
- 71-1,147.42. Transferred to section 38-2875.
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- 71-1,147.44. Delegated dispensing permit; denial or disciplinary actions; notice; hearing; procedure.
- 71-1,147.45. Delegated dispensing permit; orders authorized; civil penalty.
- 71-1,147.46. Transferred to section 38-2879.
- 71-1,147.47. Transferred to section 38-2880.
- 71-1,147.48. Delegated dispensing permit; formularies.
- 71-1,147.50. Transferred to section 38-2882.
- 71-1,147.52. Transferred to section 38-2883.
- 71-1,147.53. Delegated dispensing permit; public health clinic; dispensing requirements.
- 71-1,147.54. Transferred to section 38-2885.
- 71-1,147.55. Transferred to section 38-2886.
- 71-1,147.56. Transferred to section 38-2887.
- 71-1,147.57. Transferred to section 38-2888
- 71-1,147.59. Delegated dispensing permit; advisory committees; authorized; Public Health Clinic Formulary Advisory Committee; created; members; terms; removal.
- 71-1,147.62. Transferred to section 38-2872.
- 71-1,147.63. Transferred to section 38-2873.
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- 71-1,147.65. Pharmacy technicians; registration; requirements.
- 71-1,147.66. Pharmacy technicians; authorized tasks.
- 71-1,147.67. Pharmacy technicians; employer responsibility.
- 71-1,147.68. Pharmacy Technician Registry; created; contents.
- 71-1,147.69. Pharmacy technician; registration; disciplinary measures; procedure; Licensee Assistance Program; participation.
- 71-1,147.70. Pharmacy technician; discipline against supervising pharmacist; enforcement orders.
- 71-1,147.71. Pharmacy technician; reapplication for registration; lifting of disciplinary sanction.

- 71-1,147.72. Pharmacy technician; duty to report impaired practitioner; immunity.
- 71-1,148. Transferred to section 38-2899.
- 71-1,149. Transferred to section 38-28,100.
- 71-1,151. Repealed. Laws 2007, LB 463, § 1319.

(t) PRACTICE OF VETERINARY MEDICINE AND SURGERY

- 71-1,152.01. Transferred to section 38-3320.
- 71-1,153. Transferred to section 38-3301.
- 71-1,154. Terms, defined.
- 71-1,155. Transferred to section 38-3321.
- 71-1,157. Transferred to section 38-3323.
- 71-1,158. Transferred to section 38-3322.
- 71-1,160. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,162. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,163. Transferred to section 38-3324.
- 71-1,164. Transferred to section 38-3330.
- 71-1,165. Transferred to section 38-3325.
- 71-1,166. Transferred to section 38-3326.

(u) PRACTICE OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

- 71-1,186. Terms, defined.
- 71-1,186.01. Repealed. Laws 2007, LB 247, § 92.
- 71-1,187. Practice of audiology or speech-language pathology; law, how construed.
- 71-1,188. Transferred to section 38-513.
- 71-1,189. Transferred to section 38-514.
- 71-1,190. Practice of audiology or speech-language pathology; license; applicant; requirements.
- 71-1,190.01. Repealed. Laws 2007, LB 247, § 92.
- 71-1,191. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,192. Repealed. Laws 2007, LB 247, § 92.
- 71-1,193. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,194. Transferred to section 38-518.
- 71-1,195.01. Audiology or speech-language pathology assistant; registration; requirements.
- 71-1,195.02. Audiology or speech-language pathology assistant; supervision; termination.
- 71-1,195.03. Audiology or speech-language pathology assistant; supervisor; department; disciplinary actions; procedure.
- 71-1,195.04. Audiology or speech-language pathology assistant; initial training.
- 71-1,195.05. Audiology or speech-language pathology assistant; aural rehabilitation programs; training.
- 71-1,195.06. Audiology or speech-language pathology assistant; duties and activities.
- 71-1,195.07. Audiology or speech-language pathology assistant; acts prohibited.
- 71-1,195.08. Audiology or speech-language pathology assistant; supervisor; duties.
- 71-1,195.09. Audiology or speech-language pathology assistant; evaluation, supervision, training; supervisor; report required.

71-1,196. Transferred to section 38-512.

(v) INSURER REPORT VIOLATIONS

71-1,198. Repealed. Laws 2007, LB 463, § 1319.

71-1,199. Transferred to section 38-1,129.

71-1,200. Insurer; report to department; when required.

71-1,201. Transferred to section 38-1,133.

71-1,202. Transferred to section 38-134.

71-1,203. Repealed. Laws 2007, LB 463, § 1319.

71-1,204. Transferred to section 38-1,135.

71-1,205. Transferred to section 38-1,136.

(w) PRACTICE OF PSYCHOLOGY

71-1,206.01. Transferred to section 38-3102.

71-1,206.02. Transferred to section 38-3103.

71-1,206.03. Transferred to section 38-3104.

71-1,206.04. Transferred to section 38-3105.

71-1,206.05. Department, defined.

71-1,206.06. Transferred to section 38-3106.

71-1,206.07. Transferred to section 38-3107.

71-1,206.08. Transferred to section 38-3108.

71-1,206.09. Transferred to section 38-3109.

71-1,206.10. Transferred to section 38-3110.

71-1,206.11. Repealed. Laws 2007, LB 463, § 1319.

71-1,206.12. Repealed. Laws 2007, LB 463, § 1319.

71-1,206.14. Transferred to section 38-3111.

71-1,206.15. Transferred to section 38-3114.

71-1,206.16. Transferred to section 38-3115.

71-1,206.17. Repealed. Laws 2007, LB 463, § 1319.

71-1,206.18. Person licensed under prior law but not certified in clinical psychology; licensure; conditions.

71-1,206.19. Repealed. Laws 2007, LB 463, § 1319.

71-1,206.20. Transferred to section 38-3117.

71-1,206.21. Transferred to section 38-3118.

71-1,206.22. Transferred to section 38-3119.

71-1,206.23. Transferred to section 38-3120.

71-1,206.24. Transferred to section 38-3128.

71-1,206.25. Transferred to section 38-3113.

71-1,206.26. Transferred to section 38-3129.

71-1,206.27. Transferred to section 38-3130.

71-1,206.28. Repealed. Laws 2007, LB 463, § 1319.

71-1,206.29. Transferred to section 38-3131.

71-1,206.30. Transferred to section 38-3132.

- 71-1,206.31. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,206.32. Transferred to section 38-3122.
- 71-1,206.33. Transferred to section 38-3123.
- 71-1,206.34. Transferred to section 38-3124.
- 71-1,206.35. Transferred to section 38-3125.

(x) PRACTICE OF RESPIRATORY CARE

- 71-1,227. Transferred to section 38-3206.
- 71-1,228. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,229. Transferred to section 38-3214.
- 71-1,230. Transferred to section 38-3215.
- 71-1,231. Transferred to section 38-3209.
- 71-1,233. Transferred to section 38-3210.
- 71-1,234. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,235. Transferred to section 38-3208.
- 71-1,236. Transferred to section 38-3216.

(y) PRACTICE OF ATHLETIC TRAINING

- 71-1,238. Terms, defined.
- 71-1,239.01. Transferred to section 38-410.
- 71-1,240. Transferred to section 38-409.
- 71-1,241. Transferred to section 38-411.
- 71-1,242. Repealed. Laws 2007, LB 463, § 1319.

(bb) PRACTICE OF MASSAGE THERAPY

- 71-1,278. Transferred to section 38-1702.
- 71-1,279. Transferred to section 38-1708.
- 71-1,280. Transferred to section 38-1709.
- 71-1,281. Transferred to section 38-1710.
- 71-1,281.01. Transferred to section 38-1711.
- 71-1,282. Repealed. Laws 2007, LB 463, § 1319.

(cc) MEDICAL NUTRITION THERAPY

- 71-1,285. Transferred to section 38-1802.
- 71-1,286. Transferred to section 38-1803.
- 71-1,287. Transferred to section 38-1812.
- 71-1,289. Transferred to section 38-1813.
- 71-1,290. License; issuance.
- 71-1,291. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,291.01. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,292. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,293. Transferred to section 38-1816.
- 71-1,294. Repealed. Laws 2007, LB 463, § 1319.

(dd) MENTAL HEALTH PRACTITIONERS

- 71-1,295. Transferred to section 38-2102.
- 71-1,296. Definitions, where found.
- 71-1,297. Transferred to section 38-2104.
- 71-1,298. Transferred to section 38-2105.
- 71-1,299. Transferred to section 38-2106.
- 71-1,300. Transferred to section 38-2107.
- 71-1,301. Transferred to section 38-2108.
- 71-1,302. Transferred to section 38-2109.
- 71-1,303. Transferred to section 38-2110.
- 71-1,304. Transferred to section 38-2111.
- 71-1,305. Transferred to section 38-2112.
- 71-1,305.01. Independent mental health practice, defined.
- 71-1,306. Transferred to section 38-2114.
- 71-1,307. Mental health practice, defined; limitation on practice.
- 71-1,308. Mental health practitioner, independent mental health practitioner, defined; use of titles.
- 71-1,309. Transferred to section 38-2117.
- 71-1,310. Transferred to section 38-2118.
- 71-1,311. Transferred to section 38-2119.
- 71-1,312. License; required; exceptions.
- 71-1,313. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,314. Transferred to section 38-2122.
- 71-1,314.01. Transferred to section 38-2123.
- 71-1,314.02. Independent mental health practitioner; qualifications.
- 71-1,315. Mental health practitioner; independent mental health practitioner; license; renewal; continuing competency requirements.
- 71-1,316. Rules and regulations.
- 71-1,317. Transferred to section 38-2126.
- 71-1,318. Transferred to section 38-2127.
- 71-1,319. Transferred to section 38-2128.
- 71-1,319.01. Transferred to section 38-2129.
- 71-1,320. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,321. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,322. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,323. Transferred to section 38-2131.
- 71-1,324. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,325. Transferred to section 38-2132.
- 71-1,326. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,327. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,328. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,329. Transferred to section 38-2133.

- 71-1,330. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,331. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,332. Transferred to section 38-3124.
- 71-1,333. Certificates; license; issuance.
- 71-1,335. Mental health practitioners; confidentiality; exception.
- 71-1,336. Mental health practitioner; duty to warn of patient's threatened violent behavior; limitation on liability.
- 71-1,337. Code of ethics; board; duties; duty to report violations.
- 71-1,338. Mental health practice; violations; penalty; disciplinary action.

(ee) REPORTS OF CRIMINAL VIOLATIONS
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- 71-1,339. Clerk of county or district court; report convictions and judgments of licensees, certificate holders, and registrants; Attorney General or prosecutor; duty.

(ff) HEALTH CARE CREDENTIALING

- 71-1,340. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,341. Terms, defined.
- 71-1,342. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,343. Transferred to section 38-128.

(gg) PRACTICE OF ACUPUNCTURE

- 71-1,344. Transferred to section 38-2006.
- 71-1,345. Transferred to section 38-2057.
- 71-1,346. Transferred to section 38-2058.
- 71-1,347. Transferred to section 38-2059.
- 71-1,348. Transferred to section 38-2060.
- 71-1,349. Repealed. Laws 2007, LB 463, § 1319.

(hh) ALCOHOL AND DRUG COUNSELING

- 71-1,351. Transferred to section 38-302.
- 71-1,352. Transferred to section 38-311.
- 71-1,353. Transferred to section 38-312.
- 71-1,354. Transferred to section 38-313.
- 71-1,355. Transferred to section 38-314.
- 71-1,356. Transferred to section 38-315.
- 71-1,357. Transferred to section 38-316.
- 71-1,358. Transferred to section 38-317.
- 71-1,359. Transferred to section 38-318.
- 71-1,360. Repealed. Laws 2007, LB 463, § 1319.
- 71-1,361. Transferred to section 38-321.

(ii) PHYSICAL THERAPY PRACTICE ACT

- 71-1,362. Transferred to section 38-2901.
- 71-1,363. Transferred to section 38-2902.

- 71-1,364. Transferred to section 38-2903.
- 71-1,365. Transferred to section 38-2904.
- 71-1,366. Transferred to section 38-2905.
- 71-1,367. Department, defined.
- 71-1,368. Transferred to section 38-2906.
- 71-1,369. Transferred to section 38-2907.
- 71-1,370. Transferred to section 38-2908.
- 71-1,371. Transferred to section 38-2909.
- 71-1,372. Transferred to section 38-2910.
- 71-1,373. Transferred to section 38-2911.
- 71-1,374. Transferred to section 38-2912.
- 71-1,375. Transferred to section 38-2913.
- 71-1,376. Transferred to section 38-2914.
- 71-1,377. Transferred to section 38-2915.
- 71-1,378. Transferred to section 38-2916.
- 71-1,379. Transferred to section 38-2917.
- 71-1,380. Transferred to section 38-2918.
- 71-1,381. Transferred to section 38-2919.
- 71-1,382. Transferred to section 38-2920.
- 71-1,383. Transferred to section 38-2921.
- 71-1,384. Transferred to section 38-2922.
- 71-1,385. Transferred to section 38-2927.
- 71-1,386. Transferred to section 38-2928.
- 71-1,387. Transferred to section 38-2929.
- 71-1,388. Transferred to section 38-2926.
- 71-1,389. Repealed. Laws 2007, LB 463, § 1319.

(jj) PERFUSION PRACTICE ACT

- 71-1,390. Act, how cited.
- 71-1,391. Legislative findings and declarations.
- 71-1,392. Terms, defined.
- 71-1,393. License required; exceptions.
- 71-1,394. License requirements.
- 71-1,395. Education and examination requirements; waiver.
- 71-1,396. Temporary license.
- 71-1,397. Continuing competency requirements.
- 71-1,398. Title and abbreviation; use.
- 71-1,399. Rules and regulations.
- 71-1,400. Code of ethics; record of licensees.
- 71-1,401. Perfusionist Committee; created; membership; powers and duties; expenses.

(a) DEFINITIONS

71-101 Law, how cited; terms, defined. Sections 71-101 to 71-1,107.30, 71-1,133 to 71-1,338, 71-1,343 to 71-1,361, and 71-1301 to 71-1354, the Perfusion Practice Act, and the Physical Therapy Practice Act shall be known and may be cited as the Uniform Licensing Law.

For purposes of the Uniform Licensing Law, unless the context otherwise requires:

(1) Board or professional board means one of the boards appointed by the State Board of Health pursuant to sections 71-111 and 71-112;

(2) Licensed, when applied to any licensee in any of the professions named in section 71-102, means a person licensed under the Uniform Licensing Law;

(3) Profession or health profession means any of the several groups named in section 71-102;

(4) Department means the Division of Public Health of the Department of Health and Human Services;

(5) Whenever a particular gender is used, it is construed to include both the masculine and the feminine, and the singular number includes the plural when consistent with the intent of the Uniform Licensing Law;

(6) License, licensing, or licensure means permission to engage in a health profession which would otherwise be unlawful in this state in the absence of such permission and which is granted to individuals who meet prerequisite qualifications and allows them to perform prescribed health professional tasks and use a particular title;

(7) Certificate, certify, or certification, with respect to professions, means a voluntary process by which a statutory, regulatory entity grants recognition to an individual who has met certain prerequisite qualifications specified by such regulatory entity and who may assume or use the word certified in the title or designation to perform prescribed health professional tasks. When appropriate, certificate means a document issued by the department which designates particular credentials for an individual;

(8) Lapse means the termination of the right or privilege to represent oneself as a licensed, certified, or registered person and to practice the profession when a license, certificate, or registration is required to do so;

(9) Credentialing means the totality of the process associated with obtaining state approval to provide health care services or human services or changing aspects of a current approval. Credentialing grants permission to use a protected title that signifies that a person is qualified to provide the services of a certain profession. Credential includes a license, certificate, or registration;

(10) Dependence means a compulsive or chronic need for or an active addiction to alcohol or any controlled substance or narcotic drug; and

(11) Director means the Director of Public Health of the Division of Public Health.

Source: Laws 1927, c. 167, § 1, p. 454; C.S.1929, § 71-101; R.S.1943, § 71-101; Laws 1972, LB 1067, § 1; Laws 1984, LB 481, § 5; Laws 1986, LB 277, § 2; Laws 1986, LB 286, § 23; Laws 1986, LB 579, § 15; Laws 1986, LB 926, § 1; Laws 1986, LB 355, § 8; Laws 1987, LB 473, § 3; Laws 1988, LB 1100, § 4; Laws 1988, LB 557, § 12; Laws 1989, LB 344, § 4; Laws 1989, LB 323, § 2; Laws 1991, LB 456, § 4; Laws 1993, LB 48, § 1; Laws 1993, LB 187, § 3; Laws 1993, LB 429, § 1; Laws 1993, LB 536, § 43; Laws 1993, LB 669, § 2; Laws 1994, LB 900, § 1; Laws 1994, LB 1210, § 9; Laws 1994, LB 1223, § 2; Laws 1995, LB 406, § 10; Laws 1996, LB 1044, § 371; Laws 1997, LB 622, § 77; Laws 1999, LB 178, § 1; Laws 1999, LB 366, § 7; Laws 1999, LB 828, § 7; Laws 2001, LB 25, § 1; Laws 2001, LB 209, § 1; Laws 2001, LB 270, § 1; Laws 2001, LB 398, § 19; Laws 2002, LB 1021, § 4; Laws 2002, LB 1062, § 11; Laws 2003, LB 242, § 13; Laws 2004, LB 1005, § 8; Laws 2004, LB 1083, § 103; Laws 2005, LB 306, § 1; Laws 2006, LB 994, § 79; Laws 2007, LB236, § 1; Laws 2007, LB247, § 23; Laws 2007, LB247, § 58; Laws 2007, LB296, § 296; Laws 2007, LB463, § 1; Laws 2007, LB481, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 236, section 1, with LB 247, section 23, LB 296, section 296, and LB 481, section 1, to reflect all amendments. This section was also amended by Laws 2007, LB 247, section 58, and LB 463, section 1, and transferred to section 38-101 operative on December 1, 2008.
Note: The changes made by LB 481 became effective May 17, 2007. The changes made by LB 247, section 23, became operative June 1, 2007. The changes made by LB 296 became operative July 1, 2007. The changes made by LB 236 became effective September 1, 2007.

Cross Reference

Perfusion Practice Act, see section 71-1,390.
Physical Therapy Practice Act, see section 71-1,362.

71-101.01 Repealed. Laws 2007, LB 463, § 1319.
 Operative date December 1, 2008.

(b) LICENSES AND CERTIFICATES

71-102 Practices; license or certificate required. (1) No person shall engage in the practice of medicine and surgery, athletic training, respiratory care, osteopathic medicine, chiropractic, dentistry, dental hygiene, pharmacy, podiatry, optometry, massage therapy, physical therapy, audiology, speech-language pathology, embalming, funeral directing, psychology, veterinary medicine and surgery, medical nutrition therapy, acupuncture, perfusion, mental health practice, or alcohol and drug counseling unless such person has obtained a license from the department for that purpose.

(2) No person shall hold himself or herself out as a certified social worker or certified master social worker unless such person has obtained a certificate from the department for that purpose.

(3) No person shall hold himself or herself out as a certified professional counselor unless such person has obtained a certificate from the department for such purpose.

(4) No person shall hold himself or herself out as a certified marriage and family therapist unless such person has obtained a certificate from the department for such purpose.

Source: Laws 1927, c. 167, § 2, p. 455; C.S.1929, § 71-201; Laws 1935, c. 142, § 27, p. 529; C.S.Supp., 1941, § 71-201; R.S.1943, § 71-102; Laws 1957, c. 298, § 5, p. 1076; Laws 1961, c. 337, § 3, p. 1051; Laws 1971, LB 587, § 1; Laws 1978, LB 406, § 1; Laws 1980, LB 94, § 2; Laws 1984, LB 481, § 6; Laws 1985, LB 129, § 1; Laws 1986, LB 277, § 3; Laws 1986, LB 286, § 24; Laws 1986, LB 579, § 16; Laws 1986, LB 355, § 9; Laws 1988, LB 1100, § 5; Laws 1988, LB 557, § 13; Laws 1989, LB 342, § 4; Laws 1993, LB 669, § 3; Laws 1995, LB 406, § 11; Laws 1996, LB 1044, § 372; Laws 2001, LB 270, § 2; Laws 2004, LB 1083, § 104; Laws 2007, LB236, § 2; Laws 2007, LB247, § 59; Laws 2007, LB296, § 297; Laws 2007, LB463, § 21.

Note: This section was also amended by Laws 2007, LB 247, section 59, and LB 463, section 21, and transferred to section 38-121 operative on December 1, 2008.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 236 became effective September 1, 2007.

71-103 Transferred to section 38-129.

71-104 License, certificate, or registration; grounds for refusal. The department may refuse to grant a license, certificate, or registration to practice a profession to any person, otherwise qualified, upon any of the grounds for which a license, certificate, or registration may be revoked under the provisions of the Uniform Licensing Law.

Source: Laws 1927, c. 167, § 4, p. 455; C.S.1929, § 71-203; R.S.1943, § 71-104; Laws 1986, LB 286, § 26; Laws 1986, LB 579, § 18; Laws 1994, LB 1210, § 11; Laws 1996, LB 1044, § 373; Laws 2007, LB296, § 298; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

71-104.01 Criminal background check; when required. (1) An applicant for an initial license to practice a profession which is authorized to prescribe controlled substances shall be subject to a criminal background check. Except as provided in subsection (3) of this section, the applicant shall submit with the application a full set of fingerprints which shall be forwarded to the Nebraska State Patrol to be submitted to the Federal Bureau of Investigation for a national criminal history record information check. The applicant shall authorize release of the results of the national criminal history record information check to the department. The applicant shall pay the actual cost of the fingerprinting and criminal background check.

(2) This section shall not apply to dentists who are applicants for temporary practice rights under subdivision (5) of section 71-183.01 or to physicians and surgeons who are applicants for temporary practice rights under subdivision (9) of section 71-1,103.

(3) An applicant for a temporary educational permit as defined in section 71-1,107.01 shall have ninety days from the issuance of the permit to comply with subsection (1) of this section and shall have his or her permit suspended after such ninety-day period if the criminal background check is not complete or revoked if the criminal background check reveals that the applicant was not qualified for the permit.

Source: Laws 2005, LB 306, § 2; Laws 2005, LB 382, § 15; Laws 2006, LB 833, § 1; Laws 2007, LB247, § 60; Laws 2007, LB463, § 31; Laws 2007, LB481, § 2.
Effective date May 17, 2007.

Note: This section was also amended by Laws 2007, LB 247, section 60, and LB 463, section 31, and transferred to section 38-131 operative on December 1, 2008.

71-105 Credential; form; how executed. Every credential to practice a profession shall be in the form of a document under the name and seal of the department and signed by the director and the Governor. It shall also be countersigned by the members of the appropriate

professional board, except that all credentials granted without examination may be issued by the department under its name and seal and signed by its director and the Governor. A copy of all credentials shall be retained in the department and given the same number as has been assigned to the credentialed person in the other records of the department.

Source: Laws 1927, c. 167, § 5, p. 455; C.S.1929, § 71-204; R.S.1943, § 71-105; Laws 1994, LB 1210, § 12; Laws 1996, LB 1044, § 374; Laws 1999, LB 828, § 9; Laws 2007, LB296, § 299; Laws 2007, LB463, § 22.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 22, and transferred to section 38-122 operative on December 1, 2008.

71-106 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-107 Credential; availability; use of terms. Every person credentialed under the Uniform Licensing Law to practice a profession shall keep the credential available in an office or place in which he or she practices and shall show such proof of credentialing upon request.

On all signs, announcements, stationery, and advertisements of persons credentialed to practice osteopathic medicine, chiropractic, podiatry, optometry, audiology, speech-language pathology, medical nutrition therapy, professional counseling, social work, marriage and family therapy, mental health practice, massage therapy, physical therapy, alcohol and drug counseling, or perfusion shall be placed the word Osteopathic Physician, Chiropractor, Podiatrist, Optometrist, Audiologist, Speech-Language Pathologist, Medical Nutrition Therapist, Professional Counselor, Social Worker, Master Social Worker, Marriage and Family Therapist, Mental Health Practitioner, Massage Therapist, Physical Therapist, Alcohol and Drug Counselor, or Perfusionist, as the case may be.

Source: Laws 1927, c. 167, § 7, p. 456; C.S.1929, § 71-206; Laws 1935, c. 142, § 28, p. 529; C.S.Supp., 1941, § 71-206; Laws 1943, c. 150, § 2, p. 539; R.S.1943, § 71-107; Laws 1957, c. 298, § 6, p. 1076; Laws 1961, c. 337, § 4, p. 1051; Laws 1978, LB 406, § 2; Laws 1985, LB 129, § 2; Laws 1986, LB 286, § 28; Laws 1986, LB 579, § 20; Laws 1988, LB 1100, § 6; Laws 1988, LB 557, § 14; Laws 1989, LB 342, § 5; Laws 1993, LB 669, § 4; Laws 1994, LB 1210, § 14; Laws 1995, LB 406, § 12; Laws 1999, LB 828, § 10; Laws 2004, LB 1083, § 105; Laws 2007, LB236, § 3; Laws 2007, LB463, § 24.
Effective date September 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 24, and transferred to section 38-124 operative on December 1, 2008.

71-108 Transferred to section 38-130.

71-110 Credential; expiration date; renewal; reinstatement; fee; lapse; inactive status. (1) The credential to practice a profession shall be renewed biennially without examination upon request of the credentialed person and upon documentation of continuing competency pursuant to sections 71-161.09 and 71-161.10. The biennial credential renewals provided for in this section shall be accomplished in such manner as the department, with the approval of the designated professional board, shall establish by rule and regulation. The biennial expiration date in the different professions shall be as follows:

- (a) January, pharmacy and psychology;
- (b) February, funeral directing and embalming;
- (c) March, dentistry and dental hygiene;
- (d) April, podiatry and veterinary medicine and surgery;
- (e) May, athletic training and acupuncture;
- (f) June, respiratory care;
- (g) August, chiropractic and optometry;
- (h) September, alcohol and drug counseling, medical nutrition therapy, mental health practice including any associated certification, and osteopathic medicine;
- (i) October, medicine and surgery and perfusion;
- (j) November, massage therapy and physical therapy; and
- (k) December, audiology and speech-language pathology.

The request for renewal need not be in any particular form and shall be accompanied by the renewal fee. Such fee shall be paid not later than the date of the expiration of such credential, except that while actively engaged in the military service of the United States, as defined in the Soldiers' and Sailors' Civil Relief Act of 1940, as the act existed on January 1, 2002, persons credentialed to practice the professions listed in this subsection shall not be required to pay the renewal fee.

(2) When a person credentialed pursuant to the Uniform Licensing Law desires to have his or her credential lapse upon expiration, he or she shall notify the department of such desire in writing. The department shall notify the credentialed person in writing of the acceptance or denial of the request to allow the credential to lapse. When the lapsed status becomes effective, the right to represent himself or herself as a credentialed person and to practice the profession in which a license is required shall terminate. To restore the credential from lapsed to active status, such person shall be required to meet the requirements for initial credentialing which are in effect at the time that he or she wishes to restore the credential.

(3) When a person credentialed pursuant to the Uniform Licensing Law desires to have his or her credential placed on inactive status upon its expiration, he or she shall notify the department of such desire in writing and pay the inactive status fee. The department shall notify the credentialed person in writing of the acceptance or denial of the request to allow the credential to be placed on inactive status. When the credential is placed on inactive status, the credentialed person shall not engage in the practice of such profession. A credential may remain on inactive status for an indefinite period of time. In order to move a credential from inactive to active status, a person shall be required to meet the requirements for renewal which are in effect at the time he or she wishes to regain active status.

(4) At least thirty days before the expiration of a credential, the department shall notify each credentialed person by a letter addressed to him or her at his or her last place of residence as noted upon its records. Any credentialed person who fails to notify the department of his or her desire to let his or her credential lapse or be placed on inactive status upon its expiration or who fails to meet the requirements for renewal on or before the date of expiration of his or her

credential shall be given a second notice in the same manner as the first notice advising him or her (a) of the failure to meet the requirements for renewal, (b) that the credential has expired, (c) that the person is subject to an administrative penalty under section 71-164.01 if he or she practices after the expiration date and prior to renewal of the credential, (d) that upon the receipt of the renewal fee and the required late fee within thirty days after the expiration date, no order of revocation will be entered, and (e) that upon the failure to comply with subdivision (d) of this subsection within such time, the credential will be revoked in the manner prescribed in section 71-149.

(5) Any credentialed person who desires to reinstate the credential not more than one year after the date of revocation for failure to meet the renewal requirements shall apply to the department for reinstatement. The credential may be reinstated upon the recommendation of the board for his or her profession and the receipt of evidence of meeting the renewal requirements and paying the required late fee.

(6) Any credentialed person who desires to reinstate the credential more than one year after the date of revocation for failure to meet the renewal requirements shall petition the board to recommend reinstatement as prescribed in section 71-161.05. The credential may be reinstated upon the recommendation of the board for his or her profession and the receipt of evidence of meeting the renewal requirements and paying the required late fee.

Source: Laws 1927, c. 167, § 10, p. 456; C.S.1929, § 71-209; Laws 1933, c. 122, § 1, p. 492; Laws 1935, c. 142, § 29, p. 529; C.S.Supp.,1941, § 71-209; Laws 1943, c. 151, § 1, p. 551; R.S.1943, § 71-110; Laws 1953, c. 238, § 2, p. 824; Laws 1957, c. 298, § 7, p. 1077; Laws 1961, c. 337, § 5, p. 1051; Laws 1978, LB 406, § 3; Laws 1979, LB 427, § 3; Laws 1979, LB 428, § 1; Laws 1984, LB 481, § 8; Laws 1985, LB 129, § 4; Laws 1986, LB 277, § 4; Laws 1986, LB 286, § 30; Laws 1986, LB 579, § 22; Laws 1986, LB 926, § 4; Laws 1986, LB 355, § 10; Laws 1987, LB 473, § 5; Laws 1988, LB 1100, § 7; Laws 1988, LB 557, § 15; Laws 1989, LB 342, § 6; Laws 1990, LB 1064, § 1; Laws 1993, LB 187, § 4; Laws 1993, LB 669, § 5; Laws 1994, LB 1210, § 16; Laws 1994, LB 1223, § 3; Laws 1995, LB 406, § 13; Laws 1997, LB 197, § 1; Laws 1999, LB 828, § 12; Laws 2001, LB 270, § 3; Laws 2002, LB 1021, § 5; Laws 2003, LB 242, § 14; Laws 2004, LB 1083, § 106; Laws 2007, LB236, § 4; Laws 2007, LB463, § 42.
Effective date September 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 42, and transferred to section 38-142 operative on December 1, 2008.

71-110.01 Transferred to section 38-143.

(c) PROFESSIONAL BOARDS

71-111 Transferred to section 38-158.

71-112 Professional boards; designated; change in name; effect. (1) Professional boards under the Uniform Licensing Law shall be designated as follows:

- (a) For medicine and surgery, acupuncture, perfusion, and osteopathic medicine and surgery, Board of Medicine and Surgery;
- (b) For athletic training, Board of Athletic Training;
- (c) For respiratory care, Board of Respiratory Care Practice;
- (d) For chiropractic, Board of Chiropractic;

- (e) For dentistry and dental hygiene, Board of Dentistry;
 - (f) For optometry, Board of Optometry;
 - (g) For massage therapy, Board of Massage Therapy;
 - (h) For physical therapy, Board of Physical Therapy;
 - (i) For pharmacy, Board of Pharmacy;
 - (j) For audiology and speech-language pathology, Board of Audiology and Speech-Language Pathology;
 - (k) For medical nutrition therapy, Board of Medical Nutrition Therapy;
 - (l) For funeral directing and embalming, Board of Funeral Directing and Embalming;
 - (m) For podiatry, Board of Podiatry;
 - (n) For psychology, Board of Psychologists;
 - (o) For veterinary medicine and surgery, Board of Veterinary Medicine and Surgery;
 - (p) For mental health practice, Board of Mental Health Practice; and
 - (q) For alcohol and drug counseling, Board of Alcohol and Drug Counseling.
- (2) Any change made by the Legislature of the names of boards listed in this section shall not change the membership of such boards or affect the validity of any action taken by or the status of any action pending before any of such boards. Any such board newly named by the Legislature shall be the direct and only successor to the board as previously named.

Source: Laws 1927, c. 167, § 12, p. 457; C.S.1929, § 71-302; Laws 1935, c. 142, § 30, p. 530; C.S.Supp.,1941, § 71-302; Laws 1943, c. 150, § 4, p. 540; R.S.1943, § 71-112; Laws 1957, c. 298, § 8, p. 1078; Laws 1961, c. 337, § 6, p. 1053; Laws 1978, LB 406, § 4; Laws 1979, LB 427, § 5; Laws 1981, LB 451, § 3; Laws 1984, LB 481, § 9; Laws 1985, LB 129, § 5; Laws 1986, LB 277, § 5; Laws 1986, LB 286, § 32; Laws 1986, LB 579, § 24; Laws 1986, LB 355, § 11; Laws 1988, LB 1100, § 8; Laws 1988, LB 557, § 16; Laws 1989, LB 342, § 8; Laws 1993, LB 187, § 5; Laws 1993, LB 669, § 6; Laws 1995, LB 406, § 14; Laws 1999, LB 828, § 14; Laws 2000, LB 833, § 1; Laws 2001, LB 270, § 5; Laws 2002, LB 1021, § 7; Laws 2004, LB 1083, § 107; Laws 2007, LB236, § 5; Laws 2007, LB463, § 67.
Effective date September 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 67, and transferred to section 38-167 operative on December 1, 2008.

71-112.01 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-112.03 Transferred to section 38-161.

71-113 Transferred to section 38-162.

71-114 Transferred to section 38-164.

71-115.01 Transferred to section 38-168.

71-116 Transferred to section 38-163.

71-117 Transferred to section 38-159.

71-118 Transferred to section 38-160.

71-119 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-120 Transferred to section 38-169.

71-121 Transferred to section 38-170.

71-121.01 Department; responsibilities; costs; how paid. The department shall be responsible for the general administration of the activities of each of the boards as defined in the Advanced Practice Registered Nurse Licensure Act, the Certified Registered Nurse Anesthetist Act, the Clinical Nurse Specialist Practice Act, the Nebraska Certified Nurse Midwifery Practice Act, the Nebraska Cosmetology Act, the Nurse Practice Act, the Nurse Practitioner Act, the Occupational Therapy Practice Act, and sections 71-4701 to 71-4719 and 71-6053 to 71-6068 and the boards covered by the scope of the Uniform Licensing Law and named in section 71-102. The cost of operation and administration of the boards shall be paid from fees, gifts, grants, and other money credited to the Professional and Occupational Credentialing Cash Fund. The director shall determine the proportionate share of this cost to be paid from the fees of the respective boards, except that no fees shall be paid for such purpose from the fund without the prior approval of the boards concerned. The director's determinations shall become final when approved by the respective boards and shall be valid for one fiscal year only.

Source: Laws 1972, LB 1385, § 3; Laws 1980, LB 958, § 1; Laws 1980, LB 847, § 1; Laws 1986, LB 926, § 9; Laws 1991, LB 10, § 1; Laws 1997, LB 307, § 115; Laws 1999, LB 828, § 26; Laws 2003, LB 242, § 16; Laws 2005, LB 256, § 20; Laws 2007, LB296, § 300; Laws 2007, LB463, § 74.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 74, and transferred to section 38-174 operative on December 1, 2008.

Cross Reference

Advanced Practice Registered Nurse Licensure Act, see section 71-17,131.

Certified Registered Nurse Anesthetist Act, see section 71-1728.

Clinical Nurse Specialist Practice Act, see section 71-17,117.

Nebraska Certified Nurse Midwifery Practice Act, see section 71-1738.

Nebraska Cosmetology Act, see section 71-340.

Nurse Practice Act, see section 71-1,132.01.

Nurse Practitioner Act, see section 71-1704.

Occupational Therapy Practice Act, see section 71-6101.

71-122 Transferred to section 38-171.

71-123 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-124 Transferred to section 38-172.

71-124.01 Transferred to section 38-141.

(d) EXAMINATIONS

71-125 Transferred to section 38-132.

71-128 Transferred to section 38-133.

71-129 Transferred to section 38-135.

71-131 Examinations; grading; reexaminations. (1) In the absence of any specific requirement or provision relating to any particular profession:

(a) The department may, upon the recommendation of the designated professional board, adopt and promulgate rules and regulations to specify the passing grade on licensure or certification examinations. In the absence of such rules and regulations, an examinee shall be required to obtain an average grade of seventy-five and shall be required to obtain a grade of sixty in each subject examined;

(b) A person who desires to take a licensure or certification examination but does not wish to receive a license or certification may take such examination by meeting the examination eligibility requirements and paying the cost of the examination; and

(c) An examinee who fails a licensure or certification examination may retake the entire examination or the part failed upon payment of the licensure or certification fee each time he or she is examined. The department shall withhold from the licensure or certification fee the cost of any national examination used when an examinee fails a licensure or certification examination and shall return to the examinee the remainder of the licensure or certification fee collected subject to section 71-162.05, except that:

(i) If the state-developed jurisprudence portion of the licensure or certification examination was failed, the examinee may retake that portion without charge; and

(ii) If any component of a national examination was failed, the examinee shall be charged the cost for purchasing such examination.

(2) In pharmacy, all applicants shall be required to attain a grade to be determined by the Board of Pharmacy in an examination in pharmacy and a grade of seventy-five in an examination in jurisprudence of pharmacy.

(3) In social work, the passing criterion for such examination shall be established and may be changed by the Board of Mental Health Practice by rule and regulation. The board may exempt an applicant from the written examination if he or she meets all the requirements for certification without examination pursuant to section 71-1,319 or rules and regulations adopted and promulgated by the department pursuant to section 71-139.

(4) In professional counseling, the passing criterion for such examination shall be established and may be changed by the Board of Mental Health Practice by rule and regulation. The board may exempt an applicant from the written examination if he or she meets all of the requirements for certification without examination pursuant to rules and regulations adopted and promulgated by the department pursuant to section 71-139.

(5) In marriage and family therapy, the passing criterion for such examination shall be established and may be changed by the Board of Mental Health Practice by rule and regulation. The board may exempt an applicant from the written examination if he or she meets all of the requirements for certification without examination pursuant to section 71-1,329 or rules and regulations adopted and promulgated by the department pursuant to section 71-139.

(6) In medical nutrition therapy, the passing criterion for such examination shall be established and may be changed by the Board of Medical Nutrition Therapy by rule and regulation. Such examination shall test for the essential clinical elements of the field of medical nutrition therapy. The board shall base all of its actions on broad categorical parameters derived from the essential elements of the field of medical nutrition therapy and shall not endorse nor restrict its assessment to any particular nutritional school of thought. The board may exempt an applicant from the written examination if he or she meets all of the requirements for licensure without examination pursuant to section 71-1,291 or rules and regulations adopted and promulgated by the department pursuant to section 71-139.

(7) In alcohol and drug counseling, the Board of Alcohol and Drug Counseling shall approve a licensing examination and establish the passing criterion for such examination, which meets or exceeds the minimum international standards for alcohol and drug counselors established by the International Certification and Reciprocity Consortium, Alcohol and Other Drug Abuse, Inc. or its successor.

Source: Laws 1927, c. 167, § 31, p. 462; C.S.1929, § 71-407; Laws 1939, c. 91, § 4, p. 394; C.S.Supp., 1941, § 71-407; R.S.1943, § 71-131; Laws 1969, c. 560, § 3, p. 2279; Laws 1979, LB 427, § 16; Laws 1983, LB 476, § 4; Laws 1984, LB 481, § 14; Laws 1985, LB 250, § 1; Laws 1986, LB 277, § 7; Laws 1986, LB 286, § 38; Laws 1986, LB 579, § 30; Laws 1986, LB 926, § 16; Laws 1986, LB 355, § 13; Laws 1988, LB 1100, § 13; Laws 1988, LB 557, § 19; Laws 1989, LB 342, § 10; Laws 1990, LB 1064, § 5; Laws 1991, LB 703, § 14; Laws 1993, LB 669, § 10; Laws 1994, LB 1210, § 21; Laws 1995, LB 406, § 17; Laws 1999, LB 828, § 33; Laws 2002, LB 1021, § 8; Laws 2002, LB 1062, § 12; Laws 2003, LB 242, § 18; Laws 2004, LB 1083, § 111; Laws 2007, LB463, § 36; Laws 2007, LB481, § 3.
Effective date May 17, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 36, and transferred to section 38-136 operative on December 1, 2008.

71-132 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-133 Transferred to section 38-134.

71-138 Transferred to section 38-137.

(e) RECIPROCAL LICENSES AND CERTIFICATES

71-139 Reciprocal licenses, certificates, or registrations; in general; credentials required. (1) The department may, without examination, except when a practical examination is required, issue a license to practice any profession, except pharmacy, podiatry, dentistry, medicine and surgery, optometry, osteopathic medicine and surgery or as an

osteopathic physician, and audiology and speech-language pathology, to a person who has been in the active practice of such profession in another state or territory of the United States or the District of Columbia upon (a) certification by the proper licensing authority of the state, territory, or District of Columbia that (i) the applicant is duly licensed, (ii) his or her license has never been suspended or revoked, and (iii) so far as the records of such authority are concerned, the applicant is entitled to its endorsement and (b) proof of the following:

(i) That the state, territory, or District of Columbia has and maintains standards regulating such profession equal to those maintained in this state;

(ii) That his or her license was based upon a written examination and the grades given at such examination;

(iii) The date of his or her license;

(iv) That he or she has been actively engaged in the practice of such profession under such license or in an accepted residency or graduate training program for at least one of the three years immediately preceding the application for license by reciprocity;

(v) That the applicant is of good moral character and standing in his or her profession as evidenced by completing under oath an application from the department containing such a statement; and

(vi) That the applicant has been in the active and continuous practice of such profession under license by examination in such state, territory, or District of Columbia for at least one year.

(2) An applicant for reciprocal registration coming from any state may be licensed by reciprocity if his or her individual qualifications meet the Nebraska legal requirements.

(3) The department may issue certificates or registrations on a reciprocal basis to persons who are required to be certified or registered pursuant to the Uniform Licensing Law. The department may adopt and promulgate rules and regulations for reciprocity pursuant to this section.

(4) Persons who graduate from schools or colleges of osteopathic medicine accredited by the department on recommendation of the Board of Examiners in Osteopathy since January 1, 1963, and prior to May 23, 1981, and after May 23, 1981, persons who graduate from schools or colleges of osteopathic medicine accredited by the department on recommendation of the Board of Medicine and Surgery who meet the requirements of this section and who have passed a written examination which is equivalent to that required in section 71-1,104 as determined by the Board of Medicine and Surgery and who meet the requirements of section 71-1,137 for the practice of osteopathic medicine and surgery as evidenced by a certificate of the Board of Medicine and Surgery may be granted a license to practice osteopathic medicine and surgery as defined in section 71-1,137 if such person has been actively engaged in the practice under such license or in an accepted residency or graduate training program for at least one of the three years immediately preceding the application for license by reciprocity. Graduates of an accredited school or college of osteopathic medicine since January 1, 1963, who meet the requirements of this section and who meet the applicable requirements of section

71-1,139.01 as certified by the Board of Medicine and Surgery may be granted a special license as doctor of osteopathic medicine and surgery.

(5) The department may approve without examination any person who has been duly licensed to practice optometry in another state or territory of the United States or the District of Columbia under conditions and circumstances which the Board of Optometry shall find to be comparable to the requirements of the State of Nebraska for obtaining a license to practice optometry if such person has been actively engaged in the practice under such license for at least one of the three years immediately preceding the application for license by reciprocity. The applicant shall produce evidence satisfactory to the board that he or she has had the required secondary and professional education and training. The applicant shall provide certification from the proper licensing authority of the state, territory, or District of Columbia where he or she is licensed to practice such profession that he or she is duly licensed, that his or her license has not been suspended or revoked, and that so far as the records of such authority are concerned he or she is entitled to its endorsement. If the applicant is found to meet the requirements provided in this section and is qualified to be licensed to practice the profession of optometry in the State of Nebraska, the board shall issue a license to practice optometry in the State of Nebraska to such applicant.

(6) The Board of Dentistry may approve any person who has been duly licensed to practice dentistry or dental hygiene in another state or territory of the United States or the District of Columbia under conditions and circumstances which the board finds to be comparable to the requirements of the State of Nebraska for obtaining a license to practice dentistry or dental hygiene if such person has been actively engaged in the practice under such license or in an accepted residency or graduate training program for at least three years, one of which shall be within the three years immediately preceding the application for license by reciprocity. The applicant shall produce evidence satisfactory to the board that he or she has had the required secondary and professional education and training and is possessed of good character and morals as required by the laws of the State of Nebraska. The applicant shall provide certification from the proper licensing authority of the state, territory, or District of Columbia where he or she is licensed to practice such profession that he or she is duly licensed, that his or her license has not been suspended or revoked, and that so far as the records of such authority are concerned he or she is entitled to its endorsement. The applicant shall submit evidence of completion during the twelve-month period preceding the application of continuing competency requirements comparable to the requirements of this state. The board may administer an oral examination to all applicants for licensure by reciprocity to assess their knowledge of basic clinical aspects of dentistry or dental hygiene. If the applicant is found by the board to meet the requirements provided in this section, the board shall certify such fact to the department, and the department upon receipt of such certification shall issue a license to practice dentistry or dental hygiene in the State of Nebraska to such applicant. If the board finds that the applicant does not satisfy the requirements of this section, the board shall certify its findings to the department. The director shall review the findings, and if he or she agrees with the findings, the director shall deny the application.

Source: Laws 1927, c. 167, § 39, p. 463; C.S.1929, § 71-501; Laws 1931, c. 124, § 1, p. 358; Laws 1933, c. 122, § 2, p. 493; Laws 1939, c. 91, § 5, p. 395; C.S.Supp.,1941, § 71-501; R.S.1943, § 71-139; Laws 1965, c. 411, § 1, p. 1316; Laws 1967, c. 438, § 2, p. 1348; Laws 1972, LB 1498, § 1; Laws 1974, LB 811, § 7; Laws 1978, LB 406, § 11; Laws 1981, LB 451, § 6; Laws 1984, LB 481, § 16; Laws 1985, LB 129, § 11; Laws 1985, LB 250, § 3; Laws 1986, LB 286, § 43; Laws 1986, LB 579, § 35; Laws 1986, LB 926, § 23; Laws 1989, LB 342, § 11; Laws 1994, LB 1210, § 22; Laws 1996, LB 1044, § 375; Laws 1999, LB 828, § 37; Laws 2002, LB 1021, § 9; Laws 2007, LB296, § 301; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

71-139.01 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-139.02 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-140 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-141 Reciprocal licenses or certificates; standards of other states; how ascertained. In order that the department may determine the standards established by law and by rule in the other states, the director, or some other person authorized by the director, shall gather information from other states bearing upon this point. The applicant shall, upon the request of the department, be responsible for securing information from the proper authority of the place from which he or she comes, of the standards maintained there, and the laws and rules relating thereto. In determining these standards, the department shall submit to the appropriate professional board any question that requires the exercise of expert knowledge.

Source: Laws 1927, c. 167, § 40, p. 464; C.S.1929, § 71-502; R.S.1943, § 71-141; Laws 1996, LB 1044, § 377; Laws 1997, LB 307, § 116; Laws 1999, LB 828, § 40; Laws 2007, LB296, § 302; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

71-142 Reciprocal licenses or certificates; retaliatory refusal of admission; power of department. Where the licensing authority in any other state shall refuse to accept applicants from Nebraska who are qualified to be admitted under the laws of that state, and have been properly certified by the department of this state, then the department may decline to admit without examination licensees from that state.

Source: Laws 1927, c. 167, § 41, p. 465; C.S.1929, § 71-503; R.S.1943, § 71-142; Laws 1996, LB 1044, § 378; Laws 2007, LB296, § 303; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

71-143 Repealed. Laws 2007, LB 463, § 1319.

Operative date December 1, 2008.

71-144 Repealed. Laws 2007, LB 463, § 1319.

Operative date December 1, 2008.

71-145 Transferred to section 38-125.

(f) REVOCATION OF LICENSES AND CERTIFICATES

71-147 Transferred to section 38-178.

71-147.01 Transferred to section 38-1,128.

71-147.02 Transferred to section 38-183.

71-148 Transferred to section 38-179.

71-149 Transferred to section 38-144.

71-150 License, certificate, or registration; director; jurisdiction; denial; refuse renewal; discipline; procedure. (1) The director shall have jurisdiction of proceedings (a) to deny the issuance of a license, certificate, or registration, (b) to refuse renewal of a license, certificate, or registration, and (c) to discipline a licensee, certificate holder, or registrant.

(2) To deny or refuse renewal of a license, certificate, or registration, the department shall send the applicant, licensee, certificate holder, or registrant, by registered or certified mail, notice setting forth the action taken and the reasons for the determination. The denial or refusal to renew shall become final thirty days after mailing the notice unless the applicant, licensee, certificate holder, or registrant, within such thirty-day period, gives written notice of his or her desire for a hearing. The hearing shall be conducted in accordance with the Administrative Procedure Act.

(3) In order for the director to discipline a licensee, certificate holder, or registrant, a petition shall be filed by the Attorney General in all cases. The petition shall be filed in the office of the director. The department may withhold a petition for discipline or a final decision from public access for a period of five days from the date of filing the petition or the date the decision is entered or until service is made, whichever is earliest.

Source: Laws 1927, c. 167, § 49, p. 467; C.S.1929, § 71-604; R.S.1943, § 71-150; Laws 1986, LB 286, § 48; Laws 1986, LB 579, § 40; Laws 1988, LB 1100, § 19; Laws 1991, LB 456, § 12; Laws 1994, LB 1210, § 29; Laws 1996, LB 1044, § 382; Laws 2007, LB296, § 304; Laws 2007, LB463, § 85. Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 85, and transferred to section 38-185 operative on December 1, 2008.

Cross Reference

Administrative Procedure Act, see section 84-920.

71-151 License, certificate, or registration; revocation or suspension; duties of Attorney General and county attorney. The Attorney General shall comply with such directions of the director and prosecute such action on behalf of the state, but the county attorney of any county where a licensee, certificate holder, or registrant has practiced, at the request of the Attorney General or of the department, shall appear and prosecute such action.

Source: Laws 1927, c. 167, § 50, p. 467; C.S.1929, § 71-605; R.S.1943, § 71-151; Laws 1986, LB 286, § 49; Laws 1986, LB 579, § 41; Laws 1994, LB 1210, § 30; Laws 1997, LB 307, § 117; Laws 2007, LB296, § 305; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

71-152 Transferred to section 38-187.

71-153 License, certificate, or registration; discipline; hearing; time; place. Upon the presentation of the petition to the director, he or she shall make an order fixing the time and place for the hearing, which shall not be less than thirty nor more than sixty days thereafter.

Source: Laws 1927, c. 167, § 52, p. 468; C.S.1929, § 71-607; R.S.1943, § 71-153; Laws 1986, LB 926, § 27; Laws 1996, LB 1044, § 383; Laws 2007, LB296, § 306; Laws 2007, LB463, § 88.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 88, and transferred to section 38-188 operative on December 1, 2008.

71-154 Transferred to section 38-189.

71-155 Credential; disciplinary action; proceedings; hearing; how conducted; director; powers; order; effect. (1) The proceeding under section 71-150 shall be summary in its nature and triable as an equity action and shall be heard by the director or by a hearing officer designated by the director under rules and regulations of the department. Affidavits may be received in evidence in the discretion of the director or hearing officer. The department shall have the power to administer oaths, to subpoena witnesses and compel their attendance, and to issue subpoenas duces tecum and require the production of books, accounts, and documents in the same manner and to the same extent as the district courts of the state. Depositions may be used by either party. Upon the completion of any hearing held under this section, the director shall, if the petition is brought with respect to subdivision (15) of section 71-148, make findings as to whether the licensee's conduct was necessary to save the life of a mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, and shall have the authority through entry of an order to exercise in his or her discretion any or all of the following powers, irrespective of the petition:

- (a) Issue a censure against the credentialed person;
- (b) Place the credentialed person on probation;

(c) Place a limitation or limitations on the credential and upon the right of the credentialed person to practice the profession to such extent, scope, or type of practice, for such time, and under such conditions as are found necessary and proper;

(d) Impose a civil penalty not to exceed twenty thousand dollars. The amount of the penalty shall be based on the severity of the violation;

(e) Enter an order of suspension of the credential;

(f) Enter an order of revocation of the credential; and

(g) Dismiss the action.

(2) If the director determines that guilt has been established, the director may, at his or her discretion, consult with the professional board for the profession involved concerning sanctions to be imposed or terms and conditions of the sanctions. When the director consults with a professional board, the credentialed person shall be provided with a copy of the director's request, the recommendation of the board, and an opportunity to respond in such manner as the director determines.

(3) The credentialed person shall not engage in the practice of a profession after a credential to practice such profession is revoked or during the time for which it is suspended. If a credential is suspended, the suspension shall be for a definite period of time to be set by the director. The director may provide that the credential shall be automatically reinstated upon expiration of such period, reinstated if the terms and conditions as set by the director are satisfied, or reinstated subject to probation or limitations or conditions upon the practice of the credentialed person. If such credential is revoked, such revocation shall be for all times, except that at any time after the expiration of two years, application may be made for reinstatement pursuant to section 71-161.04.

Source: Laws 1927, c. 167, § 54, p. 468; C.S.1929, § 71-609; Laws 1943, c. 150, § 13, p. 544; R.S.1943, § 71-155; Laws 1976, LB 877, § 3; Laws 1984, LB 481, § 20; Laws 1986, LB 286, § 52; Laws 1986, LB 579, § 44; Laws 1986, LB 926, § 28; Laws 1988, LB 1100, § 20; Laws 1991, LB 456, § 14; Laws 1994, LB 1210, § 33; Laws 1994, LB 1223, § 7; Laws 1996, LB 1044, § 384; Laws 1997, LB 23, § 6; Laws 1999, LB 828, § 43; Laws 2007, LB296, § 307; Laws 2007, LB463, § 96.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 96, and transferred to section 38-196 operative on December 1, 2008.

71-155.01 Contested cases; chief medical officer; duties. If a chief medical officer is appointed pursuant to section 81-3115, he or she shall perform the duties of the director for decisions in contested cases under sections 71-150, 71-153 to 71-155, 71-156, 71-161.02, 71-161.03, 71-161.07, 71-161.11 to 71-161.15, 71-161.17, 71-161.18, 71-161.20, 71-1,104, 71-1,142, 71-1,147.31, 71-1,147.44, and 71-1,147.45.

Source: Laws 1997, LB 622, § 78; Laws 2001, LB 398, § 21; Laws 2003, LB 245, § 11; Laws 2007, LB296, § 308; Laws 2007, LB463, § 101.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 101, and transferred to section 38-1,101 operative on December 1, 2008.

71-155.03 Transferred to section 38-198.

71-156 License, certificate, or registration; revocation, suspension, or other disciplinary action; hearing; failure to appear; effect. In case the licensee, certificate holder, or registrant fails to appear, either in person or by counsel at the time and place designated in the notice required by section 71-154, the director after receiving satisfactory evidence of the truth of the charges shall order the license, certificate, or registration revoked or suspended or shall take any or all of the other appropriate disciplinary measures authorized by section 71-155 against the licensee, certificate holder, or registrant.

Source: Laws 1927, c. 167, § 55, p. 468; C.S.1929, § 71-610; R.S.1943, § 71-156; Laws 1976, LB 877, § 4; Laws 1986, LB 286, § 54; Laws 1986, LB 579, § 46; Laws 1994, LB 1210, § 34; Laws 1996, LB 1044, § 385; Laws 2007, LB296, § 309; Laws 2007, LB463, § 91.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 91, and transferred to section 38-191 operative on December 1, 2008.

71-157 Transferred to section 38-194.**71-158 Transferred to section 38-195.****71-159 Transferred to section 38-1,102.**

71-160 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-161.01 Transferred to section 38-177.

71-161.02 Licensee, certificate holder, or registrant; probation; conditions. The authority of the director to discipline a licensee, certificate holder, or registrant by placing him or her on probation pursuant to section 71-155 shall include, but not be limited to, the following:

(1) To require the licensee, certificate holder, or registrant to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral or both and may be a practical or clinical examination or both or any or all of such combinations of written, oral, practical, and clinical, at the option of the director;

(2) To require the licensee, certificate holder, or registrant to submit to a complete diagnostic examination by one or more physicians appointed by the director. If the director requires the licensee, certificate holder, or registrant to submit to such an examination, the director shall receive and consider any other report of a complete diagnostic examination given by one or more physicians of the licensee's, certificate holder's, or registrant's choice if the licensee, certificate holder, or registrant chooses to make available such a report or reports by his or her physician or physicians; and

(3) To limit the extent, scope, or type of practice of the licensee, certificate holder, or registrant.

Source: Laws 1976, LB 877, § 7; Laws 1986, LB 286, § 56; Laws 1986, LB 579, § 48; Laws 1991, LB 456, § 15; Laws 1994, LB 1210, § 36; Laws 1996, LB 1044, § 388; Laws 2007, LB296, § 310; Laws 2007, LB463 § 97.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 97, and transferred to section 38-197 operative on December 1, 2008.

71-161.03 Petition for disciplinary action; disposition prior to order; methods; Attorney General; duties. (1) Any petition filed with the director pursuant to section 71-150 may, at any time prior to the entry of any order by the director, be disposed of by stipulation, agreed settlement, consent order, or similar method as agreed to between the parties. A proposed settlement shall be submitted and considered in camera and shall not be a public record unless accepted by the director. The director may review the input provided to the Attorney General by the board pursuant to subsection (2) of this section. If the settlement is acceptable to the director, he or she shall make it the sole basis of any order he or she enters in the matter, and it may be modified or added to by the director only upon the mutual consent of both of the parties thereto. If the settlement is not acceptable to the director, it shall not be admissible in any subsequent hearing and it shall not be considered in any manner as an admission.

(2) The Attorney General shall not enter into any agreed settlement or dismiss any petition without first having given notice of the proposed action and an opportunity to the appropriate professional board to provide input into the terms of the settlement or on dismissal. The board shall have fifteen days from the date of the Attorney General's request to respond, but the recommendation of the board, if any, shall not be binding on the Attorney General. Meetings of the board for such purpose shall be in closed session, and any recommendation by the board to the Attorney General shall not be a public record until the pending action is complete, except that if the director reviews the input provided to the Attorney General by the board as provided in subsection (1) of this section, the licensee, certificate holder, or registrant shall also be provided a copy of the input and opportunity to respond in such manner as the director determines.

Source: Laws 1976, LB 877, § 8; Laws 1988, LB 1100, § 22; Laws 1991, LB 456, § 16; Laws 1994, LB 1223, § 8; Laws 1996, LB 1044, § 389; Laws 1999, LB 828, § 44; Laws 2007, LB296, § 311; Laws 2007, LB463, § 90.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 90, and transferred to section 38-190 operative on December 1, 2008.

71-161.04 Transferred to section 38-148.

71-161.05 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-161.06 Petition for reinstatement of license, certificate, or registration; when considered and acted upon; hearing; when allowed; procedure. A petition for reinstatement of a license, certificate, or registration shall be considered at the next meeting of the board that is held not earlier than thirty days after the petition was filed. No public hearing need be held on the petition if the board recommends reinstatement of the license, certificate, or registration. Opportunity for a formal public hearing on the petition shall be granted by the board, if formally requested by the petitioner, prior to any recommendation by the board against reinstatement. Any petition for reinstatement accompanied by the requisite information and necessary documents shall be conclusively acted upon by the board within one hundred eighty days after the filing of the properly prepared petition and necessary accompanying documents with the board. If the petitioner formally requests opportunity for a formal public hearing thereon or if the board otherwise holds such a hearing, the petitioner shall be given at least thirty days' prior notice thereof by sending a copy of the notice of hearing by means of certified or registered mail directed to the petitioner at his or her last-known residence or business post office address as shown by the files or records of the department or as otherwise known or by means of personal service by being personally served by any sheriff or constable or by any person especially appointed by the board. The hearing may be continued from time to time as the board finds necessary.

Source: Laws 1976, LB 877, § 11; Laws 1986, LB 286, § 59; Laws 1986, LB 579, § 51; Laws 1990, LB 1064, § 8; Laws 1994, LB 1210, § 39; Laws 1996, LB 1044, § 390; Laws 2007, LB296, § 312; Laws 2007, LB463, § 49.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 49, and transferred to section 38-149 operative on December 1, 2008.

71-161.07 Disciplinary actions; recommendation by professional board; appeal. (1) Each professional board shall make a recommendation to the director regarding reinstatement following disciplinary action within the board's profession. In determining whether reinstatement should be recommended, the board (a) may request the department to investigate the petitioner to determine if the petitioner has committed acts or offenses prohibited by sections 71-147 and 71-148, (b) may require the petitioner to submit to a complete diagnostic examination by one or more physicians appointed by the board, the petitioner being free also to consult a physician or physicians of his or her own choice for a complete diagnostic examination and to make available a report or reports thereof to the board, (c) may require the petitioner to pass a written, oral, or practical examination or any combination of such examinations, and (d) may require additional education.

(2) The affirmative vote of a majority of the members of the board shall be necessary to recommend reinstatement of a credential with or without terms, conditions, or restrictions. The board may grant or deny, without a hearing or argument, any petition to recommend reinstatement filed pursuant to section 71-161.04 when the petitioner has been afforded a

hearing or an opportunity for a hearing upon any such petition within a period of two years immediately preceding the filing of such petition.

(3) Denial by the board of the petition for recommendation of reinstatement of the license or certificate may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1976, LB 877, § 12; Laws 1986, LB 286, § 60; Laws 1986, LB 579, § 52; Laws 1988, LB 352, § 114; Laws 1988, LB 1100, § 25; Laws 1991, LB 456, § 17; Laws 1994, LB 1210, § 40; Laws 1996, LB 1044, § 391; Laws 1999, LB 828, § 46; Laws 2007, LB296, § 313; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

Cross Reference

Administrative Procedure Act, see section 84-920.

71-161.09 Transferred to section 38-145.

71-161.10 Transferred to section 38-146.

71-161.11 Transferred to section 38-1,109.

71-161.12 License, certificate, or registration; disciplinary actions; additional grounds. In addition to the grounds for denial, refusal of renewal, limitation, suspension, or revocation of a license, certificate, or registration as otherwise provided by law, a license, certificate, or registration to practice any profession or occupation regulated by the department pursuant to Chapter 71 shall be denied, refused renewal, limited, suspended, or revoked automatically by the director when the applicant, licensee, certificate holder, or registrant is found to be not qualified to practice the particular profession or occupation for which he or she is applying, licensed, certified, or registered because of habitual intoxication or dependence, physical or mental illness, or physical or mental deterioration or disability.

Source: Laws 1976, LB 877, § 17; Laws 1986, LB 286, § 64; Laws 1986, LB 579, § 56; Laws 1991, LB 456, § 19; Laws 1996, LB 1044, § 392; Laws 2001, LB 398, § 22; Laws 2007, LB296, § 314; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

71-161.13 Complaint alleging dependence or disability; director; investigation; report; review by professional board; finding; effect. When any complaint has been filed with the department by any person or any report has been made to the director by the Licensee Assistance Program under section 71-172.01 alleging that an applicant for a credential or a person credentialed to practice any profession or occupation in the state regulated by the department pursuant to Chapter 71 is suffering from habitual intoxication or dependence, physical or mental illness, or physical or mental deterioration or disability, the director shall investigate such complaint to determine if any reasonable cause exists to question the

qualification of the applicant or credentialed person to practice or to continue to practice such profession or occupation. If the director on the basis of such investigation or, in the absence of such complaint, upon the basis of his or her own independent knowledge finds that reasonable cause exists to question the qualification of the applicant or credentialed person to practice such profession or occupation because of habitual intoxication or dependence, physical or mental illness, or physical or mental deterioration or disability, the director shall report such finding and evidence supporting it to the appropriate professional board and if such board agrees that reasonable cause exists to question the qualification of such applicant or credentialed person, the board shall appoint a committee of three qualified physicians to examine the applicant or credentialed person and to report their findings and conclusions to the board. The board shall then consider the findings and the conclusions of the physicians and any other evidence or material which may be submitted to that board by the applicant or credentialed person, by the director, or by any other person and shall then determine if the applicant or credentialed person is qualified to practice or to continue to practice such profession or occupation in the State of Nebraska. If such board finds the applicant or credentialed person to be not qualified to practice or to continue to practice such profession or occupation because of habitual intoxication or dependence, physical or mental illness, or physical or mental deterioration or disability, the board shall so certify that fact to the director with a recommendation for the denial, refusal of renewal, limitation, suspension, or revocation of such credential. The director shall thereupon deny, refuse renewal of, suspend, or revoke the credential or limit the credential of the credentialed person to practice such profession or occupation in the state in such manner and to such extent as the director determines to be necessary for the protection of the public.

Source: Laws 1976, LB 877, § 18; Laws 1986, LB 286, § 65; Laws 1986, LB 579, § 57; Laws 1991, LB 456, § 20; Laws 1996, LB 1044, § 393; Laws 1999, LB 828, § 49; Laws 2001, LB 398, § 23; Laws 2007, LB296, § 315; Laws 2007, LB463, § 110.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 110, and transferred to section 38-1,110 operative on December 1, 2008.

71-161.14 Credential; denied or revoked because of physical or mental disability; duration; when issued, returned, or reinstated; manner. The denial, refusal of renewal, limitation, suspension, or revocation of a credential as provided in section 71-161.13 shall continue in effect until reversed on appeal or until the cause of such denial, refusal of renewal, limitation, suspension, or revocation no longer exists and the appropriate professional board finds, upon competent medical evaluation by a qualified physician or physicians, that the applicant, former credentialed person, or credentialed person is qualified to engage in the practice of the profession or occupation for which he or she made application, for which he or she was formerly credentialed, or for which he or she was credentialed subject to limitation and certifies that fact to the director. Upon such finding the director, notwithstanding the provision of any other statute, shall issue, return, or reinstate such credential or remove

any limitation on such credential if the person is otherwise qualified as determined by the appropriate professional board to practice or to continue in the practice of the profession or occupation.

Source: Laws 1976, LB 877, § 19; Laws 1986, LB 286, § 66; Laws 1986, LB 579, § 58; Laws 1994, LB 1210, § 43; Laws 1996, LB 1044, § 394; Laws 1999, LB 828, § 50; Laws 2007, LB296, § 316; Laws 2007, LB463, § 111.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 111, and transferred to section 38-1,111 operative on December 1, 2008.

71-161.15 Transferred to section 38-1,112.

71-161.16 Disciplinary action; appeal. Any applicant, licensee, certificate holder, or registrant shall have the right to appeal from an order denying, refusing renewal of, limiting, suspending, or revoking a license, certificate, or registration to practice a profession or occupation regulated by the department pursuant to Chapter 71 because of habitual intoxication or dependence, physical or mental illness, or physical or mental deterioration or disability. Such appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1976, LB 877, § 21; Laws 1986, LB 286, § 68; Laws 1986, LB 579, § 60; Laws 1988, LB 352, § 115; Laws 1991, LB 456, § 21; Laws 1996, LB 1044, § 396; Laws 2001, LB 398, § 24; Laws 2007, LB296, § 317; Laws 2007, LB463, § 113.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 113, and transferred to section 38-1,113 operative on December 1, 2008.

Cross Reference

Administrative Procedure Act, see section 84-920.

71-161.17 Licensee, certificate holder, or registrant; mentally ill; automatic suspension; copy of determination of mental illness; termination of suspension; when. (1) The license, certificate, or registration of any person to practice any profession or occupation licensed, certified, or registered by the department pursuant to the provisions of Chapter 71 shall be suspended automatically if he or she is determined by legal process to be mentally ill.

(2) A certified copy of the document evidencing that such a licensee, certificate holder, or registrant has been determined by legal process to be mentally ill shall be transmitted to the director as soon as possible following such determination.

(3) A suspension under this section may be terminated by the director when he or she receives competent evidence that such former practitioner is not or is no longer mentally ill and is otherwise satisfied, with due regard for the public interest, that such former practitioner's license, certificate, or registration to practice may be restored.

Source: Laws 1976, LB 877, § 22; Laws 1986, LB 286, § 69; Laws 1986, LB 579, § 61; Laws 1994, LB 1210, § 45; Laws 1996, LB 1044, § 397; Laws 2007, LB296, § 318; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

71-161.18 Repealed. Laws 2007, LB 463, § 1319.

Operative date December 1, 2008.

71-161.19 Transferred to section 38-173.

71-161.20 Reinstatement; application; supporting documents; director; powers and duties. (1) An applicant may apply to the director for reinstatement only with an affirmative recommendation of the appropriate professional board, and such application to the director may not be received or filed by the director unless accompanied by (a) the written recommendation of the board, including any finding of fact or order of the board, (b) the application submitted to the board, (c) the record of hearing if any, and (d) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the board and the petitioner.

(2) The director shall then review the application and other documents and may affirm the recommendation of the board and grant reinstatement or may reverse or modify the recommendation if the board's recommendation is (a) in excess of statutory authority, (b) made upon unlawful procedure, (c) unsupported by competent, material, and substantial evidence in view of the entire record, or (d) arbitrary or capricious.

Source: Laws 1991, LB 456, § 18; Laws 1996, LB 1044, § 399; Laws 1999, LB 828, § 53; Laws 2007, LB296, § 319; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

(g) FEES

71-162 Credentialing system; administrative costs; how paid. (1) It is the intent of the Legislature that the revenue to cover the cost of the credentialing system administered by the department is to be derived from General Funds, cash funds, federal funds, gifts, grants, or fees from individuals or entities seeking credentials. The credentialing system includes the totality of the credentialing infrastructure and the process of issuance and renewal of credentials, examinations, inspections, investigations, continuing competency, compliance assurance, and the credentialing review process for the following individuals and entities that provide health services and health-related services:

(a) Individuals in the practice of acupuncture; advanced practice nursing; alcohol and drug counseling; asbestos abatement, inspection, project design, and training; athletic training; audiology; speech-language pathology; chiropractic; dentistry; dental hygiene; environmental health; hearing aid instrument dispensing and fitting; lead-based paint abatement, inspection, project design, and training; medical nutrition therapy; medical radiography; medicine and surgery; mental health practice; nursing; nursing home administration; occupational

therapy; optometry; osteopathic medicine; perfusion; pharmacy; physical therapy; podiatry; psychology; radon detection, measurement, and mitigation; respiratory care; social work; swimming pool operation; veterinary medicine and surgery; water system operation; constructing or decommissioning water wells and installing water well pumps and pumping equipment; and

(b) Individuals in the practice of and entities in the business of body art; cosmetology; electrology; emergency medical services; esthetics; funeral directing and embalming; massage therapy; and nail technology.

(2) The department shall determine the cost of the credentialing system for such individuals and entities by calculating the total of the base costs, the variable costs, and any adjustments as provided in sections 71-162.01 to 71-162.03.

(3) When fees are to be established pursuant to section 71-162.04 for individuals or entities other than individuals in the practice of constructing or decommissioning water wells and installing water well pumps and pumping equipment, the department, upon recommendation of the appropriate board if applicable, shall base the fees on the cost of the credentialing system and shall include usual and customary cost increases, a reasonable reserve, and the cost of any new or additional credentialing activities. For individuals in the practice of constructing or decommissioning water wells and installing water well pumps and pumping equipment, the Water Well Standards and Contractors' Licensing Board shall establish the fees as otherwise provided in this subsection. All such fees shall be collected as provided in section 71-163.

Source: Laws 1927, c. 167, § 61, p. 469; C.S.1929, § 71-701; Laws 1935, c. 142, § 34, p. 531; Laws 1937, c. 157, § 1, p. 615; Laws 1941, c. 141, § 1, p. 555; C.S.Supp.,1941, § 71-701; Laws 1943, c. 150, § 16, p. 545; R.S.1943, § 71-162; Laws 1953, c. 238, § 3, p. 825; Laws 1955, c. 270, § 2, p. 850; Laws 1957, c. 292, § 1, p. 1048; Laws 1957, c. 298, § 12, p. 1080; Laws 1959, c. 318, § 2, p. 1166; Laws 1961, c. 337, § 8, p. 1054; Laws 1963, c. 409, § 1, p. 1314; Laws 1965, c. 412, § 1, p. 1319; Laws 1967, c. 438, § 4, p. 1350; Laws 1967, c. 439, § 17, p. 1364; Laws 1969, c. 560, § 6, p. 2281; Laws 1969, c. 562, § 1, p. 2288; Laws 1971, LB 300, § 1; Laws 1971, LB 587, § 9; Laws 1973, LB 515, § 3; Laws 1975, LB 92, § 1; Laws 1978, LB 689, § 1; Laws 1978, LB 406, § 12; Laws 1979, LB 4, § 6; Laws 1979, LB 428, § 3; Laws 1981, LB 451, § 8; Laws 1982, LB 263, § 1; Laws 1982, LB 448, § 2; Laws 1982, LB 449, § 2; Laws 1982, LB 450, § 2; Laws 1984, LB 481, § 22; Laws 1985, LB 129, § 12; Laws 1986, LB 277, § 8; Laws 1986, LB 286, § 72; Laws 1986, LB 579, § 64; Laws 1986, LB 926, § 36; Laws 1986, LB 355, § 14; Laws 1987, LB 473, § 18; Laws 1988, LB 1100, § 26; Laws 1988, LB 557, § 20; Laws 1989, LB 342, § 12; Laws 1990, LB 1064, § 9; Laws 1991, LB 703, § 17; Laws 1992, LB 1019, § 39; Laws 1993, LB 187, § 7; Laws 1993, LB 669, § 12; Laws 1994, LB 1210, § 46; Laws 1994, LB 1223, § 9; Laws 1995, LB 406, § 18; Laws 1997, LB 622, § 80; Laws 1999, LB 828, § 54; Laws 2001, LB 270, § 7; Laws 2003, LB 242, § 23; Laws 2004, LB 906, § 2; Laws 2004, LB 1005, § 10; Laws 2004, LB 1083, § 113; Laws 2006, LB 994, § 81; Laws 2007, LB236, § 6; Laws 2007, LB283, § 1; Laws 2007, LB463, § 51.
Effective date September 1, 2007.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 236, section 6, with LB 283, section 1, to reflect all amendments. This section was also amended by Laws 2007, LB 463, section 51, and transferred to section 38-151 operative on December 1, 2008.

Cross Reference

Fees of state boards, see sections 33-151 and 33-152.

71-162.01 Transferred to section 38-152.

71-162.02 Transferred to section 38-153.

71-162.03 Transferred to section 38-154.

71-162.04 Transferred to section 38-155.

71-162.05 Transferred to section 38-156.

71-163 Transferred to section 38-157.

(h) VIOLATIONS, CRIMES, PUNISHMENT

71-164 Transferred to section 38-1,114.

71-164.01 Transferred to section 38-1,116.

71-165 Filing false documents with department; forgery; penalty. Any person who shall file, or attempt to file, with the department any false or forged diploma or certificate, or affidavit of identification or qualification, shall be deemed guilty of forgery, and upon conviction thereof shall be punished according to the penalties imposed in the statutes relating to that subject.

Source: Laws 1927, c. 167, § 64, p. 471; C.S.1929, § 71-802; R.S.1943, § 71-165; Laws 1996, LB 1044, § 400; Laws 2007, LB296, § 320; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

71-166 Transferred to section 38-1,117.

71-167 Transferred to section 38-1,118.

(i) ENFORCEMENT PROVISIONS

71-168 Enforcement; investigations; violations; credentialed person; duty to report; cease and desist order; violation; penalty; loss or theft of controlled substance; duty to report; confidentiality; immunity. (1) The department shall enforce the Uniform Licensing Law and for that purpose shall make necessary investigations. Every credentialed person listed under subsection (4) of this section and every member of a professional board shall furnish the department such evidence as he or she may have relative to any alleged violation which is being investigated.

(2) Every credentialed person listed under subsection (4) of this section shall report to the department the name of every person without a credential that he or she has reason to believe is engaged in practicing any profession for which a credential is required by the Uniform Licensing Law. The department may, along with the Attorney General and other law enforcement agencies, investigate such reports or other complaints of unauthorized practice.

The professional board may issue an order to cease and desist the unauthorized practice of such profession as a measure to obtain compliance with the applicable credentialing requirements by the person prior to referral of the matter to the Attorney General for action. Practice of such profession without a credential after receiving a cease and desist order is a Class III felony.

(3) Any credentialed person listed under subsection (4) of this section who is required to file a report of loss or theft of a controlled substance to the federal Drug Enforcement Administration shall provide a copy of such report to the department.

(4) Every credentialed person regulated under the Advanced Practice Registered Nurse Licensure Act, the Certified Registered Nurse Anesthetist Act, the Clinical Nurse Specialist Practice Act, the Emergency Medical Services Act, the Licensed Practical Nurse-Certified Act, the Nebraska Certified Nurse Midwifery Practice Act, the Nebraska Cosmetology Act, the Nurse Practice Act, the Nurse Practitioner Act, the Occupational Therapy Practice Act, the Uniform Controlled Substances Act, the Uniform Licensing Law except pharmacist interns and pharmacy technicians, the Wholesale Drug Distributor Licensing Act, or sections 71-3702 to 71-3715, 71-4701 to 71-4719, or 71-6053 to 71-6068 shall, within thirty days of an occurrence described in this subsection, report to the department in such manner and form as the department may require by rule and regulation whenever he or she:

(a) Has first-hand knowledge of facts giving him or her reason to believe that any person in his or her profession has committed acts indicative of gross incompetence, a pattern of negligent conduct as defined in subdivision (5)(e) of section 71-147, or unprofessional conduct, may be practicing while his or her ability to practice is impaired by alcohol, controlled substances, narcotic drugs, or physical, mental, or emotional disability, or has otherwise violated such regulatory provisions governing the practice of the profession;

(b) Has first-hand knowledge of facts giving him or her reason to believe that any person in another profession regulated under such regulatory provisions has committed acts indicative of gross incompetence or may be practicing while his or her ability to practice is impaired by alcohol, controlled substances, narcotic drugs, or physical, mental, or emotional disability. The requirement to file a report under subdivision (a) or (b) of this subsection shall not apply (i) to the spouse of the person, (ii) to a practitioner who is providing treatment to such person in a practitioner-patient relationship concerning information obtained or discovered in the course of treatment unless the treating practitioner determines that the condition of the person may be of a nature which constitutes a danger to the public health and safety by the person's continued practice, or (iii) when a credentialed person who is chemically impaired enters the Licensee Assistance Program authorized by section 71-172.01 except as provided in such section; or

(c) Has been the subject of any of the following actions:

(i) Loss of privileges in a hospital or other health care facility due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment or the voluntary limitation of privileges or resignation from staff of any health care facility when that occurred while under formal or informal investigation or evaluation by the facility

or a committee of the facility for issues of clinical competence, unprofessional conduct, or physical, mental, or chemical impairment;

(ii) Loss of employment due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment;

(iii) Adverse judgments, settlements, or awards arising out of professional liability claims, including settlements made prior to suit in which the patient releases any professional liability claim against the credentialed person, or adverse action by an insurance company affecting professional liability coverage. The department may define by rule and regulation what constitutes a settlement that would be reportable when a credentialed person refunds or reduces a fee or makes no charge for reasons related to a patient or client complaint other than costs;

(iv) Denial of a credential or other form of authorization to practice by any state, territory, or jurisdiction, including any military or federal jurisdiction, due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment;

(v) Disciplinary action against any credential or other form of permit he or she holds taken by another state, territory, or jurisdiction, including any federal or military jurisdiction, the settlement of such action, or any voluntary surrender of or limitation on any such credential or other form of permit;

(vi) Loss of membership in a professional organization due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment; or

(vii) Conviction of any misdemeanor or felony in this or any other state, territory, or jurisdiction, including any federal or military jurisdiction.

(5) A report submitted by a professional liability insurance company on behalf of a credentialed person shall be sufficient to satisfy the credentialed person's reporting requirement under subsection (4) of this section.

(6) A report made to the department under this section shall be confidential and treated in the same manner as complaints and investigative files under subsection (7) of section 71-168.01. Any person making a report to the department under this section except those self-reporting shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. Persons who are members of committees established under the Patient Safety Improvement Act and sections 25-12,123, 71-2046 to 71-2048, and 71-7901 to 71-7903 or witnesses before such committees shall not be required to report such activities. Any person who is a witness before a committee established under such sections shall not be excused from reporting matters of first-hand knowledge that would otherwise be reportable under this section only because he or she attended or testified before such committee. Documents from original sources shall not be construed as immune from discovery or use in actions under subsection (4) of this section.

Source: Laws 1927, c. 167, § 67, p. 472; C.S.1929, § 71-901; R.S.1943, § 71-168; Laws 1986, LB 286, § 74; Laws 1986, LB 579, § 66; Laws 1991, LB 456, § 23; Laws 1994, LB 1210, § 50; Laws 1994, LB 1223, § 10; Laws 1995, LB 563, § 2; Laws 1996, LB 414, § 1; Laws 1997, LB 138, § 42; Laws 1997, LB 222, § 4; Laws 1999, LB 828, § 55; Laws 2000, LB 1115, § 12; Laws 2005, LB 256, § 21; Laws 2005, LB 306, § 3; Laws 2005, LB 361, § 32; Laws 2005, LB 382, § 5; Laws 2007, LB236, § 7; Laws 2007, LB463, § 124.
Effective date September 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 124, and transferred to section 38-1,124 operative on December 1, 2008.

Cross Reference

Advanced Practice Registered Nurse Licensure Act, see section 71-17,131.

Certified Registered Nurse Anesthetist Act, see section 71-1728.

Clinical Nurse Specialist Practice Act, see section 71-17,117.

Emergency Medical Services Act, see section 71-5172.

Licensed Practical Nurse-Certified Act, see section 71-1772.

Nebraska Certified Nurse Midwifery Practice Act, see section 71-1738.

Nebraska Cosmetology Act, see section 71-340.

Nurse Practice Act, see section 71-1,132.01.

Nurse Practitioner Act, see section 71-1704.

Occupational Therapy Practice Act, see section 71-6101.

Patient Safety Improvement Act, see section 71-8701.

Uniform Controlled Substances Act, see section 28-401.01.

Wholesale Drug Distributor Licensing Act, see section 71-7401.

71-168.01 Transferred to section 38-1,138.

71-168.02 Transferred to section 38-1,127.

71-169 Rules and regulations; department; adopt. The department shall promulgate necessary rules and regulations and forms for carrying out the provisions of the Uniform Licensing Law. It may also adopt rules and regulations supplementing any of the provisions herein contained but not inconsistent therewith.

Source: Laws 1927, c. 167, § 68, p. 472; C.S.1929, § 71-902; R.S.1943, § 71-169; Laws 1996, LB 1044, § 401; Laws 2007, LB296, § 321; Laws 2007, LB463, § 26.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 26, and transferred to section 38-126 operative on December 1, 2008.

71-170 Transferred to section 38-127.

71-171 Transferred to section 38-1,139.

71-171.01 Transferred to section 38-1,107.

71-171.02 Transferred to section 38-1,108.

71-172 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

(j) LICENSEE ASSISTANCE PROGRAM

71-172.01 Licensee Assistance Program; authorized; participation; immunity from liability; referral; limitation. (1) The department may contract to provide a Licensee Assistance Program to credential holders regulated by the department. The program shall be limited to providing education, referral assistance, and monitoring of compliance with treatment of habitual intoxication or dependence and shall be limited to voluntary participation by credential holders.

(2)(a) Participation in the program shall be confidential, except that if any evaluation by the program determines that the intoxication or dependence may be of a nature which constitutes a danger to the public health and safety by the person's continued practice or if the person fails to comply with any term or condition of a treatment plan, the program shall report the same to the director.

(b) Participation in the program shall not preclude the investigation of alleged statutory violations which could result in disciplinary action against the person's credential or criminal action against the person. Any report from any person or from the program to the department indicating that a credential holder is suffering from habitual intoxication or dependence shall be treated as a complaint against such credential and shall subject such credential holder to discipline under sections 71-150 to 71-155.

(3) No person who makes a report of intoxication or dependence to the program or from the program to the department shall be liable in damages to any person for slander, libel, defamation of character, breach of any privileged communication, or other criminal or civil action of any nature, whether direct or derivative, for making such report or providing information to the program or department in accordance with this section.

(4) Any person who contacts the department for information on or assistance in obtaining referral or treatment of himself or herself or any other person credentialed by the department for habitual intoxication or dependence shall be referred to the program. Such inquiries shall not be used by the department as the basis for investigation for disciplinary action, except that such limitation shall not apply to complaints or any other reports or inquiries made to the department concerning persons who may be suffering from habitual intoxication or dependence or when a complaint has been filed or an investigation or disciplinary or other administrative proceeding is in process.

Source: Laws 1991, LB 456, § 8; Laws 1994, LB 1223, § 13; Laws 1996, LB 1044, § 403; Laws 1997, LB 307, § 121; Laws 2001, LB 398, § 25; Laws 2003, LB 242, § 31; Laws 2007, LB296, § 322; Laws 2007, LB463, § 75.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 75, and transferred to section 38-175 operative on December 1, 2008.

71-172.02 Fee; Licensee Assistance Cash Fund; created; use; investment. The department shall charge a fee of one dollar per year, in addition to any other fee, for each credential. Such fee shall be collected at the time of issuance or renewal and shall be remitted to the State Treasurer for credit to the Licensee Assistance Cash Fund, which fund is hereby

created. Money in the fund shall be used to carry out section 71-172.01. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1991, LB 456, § 9; Laws 1994, LB 1066, § 65; Laws 1996, LB 1044, § 404; Laws 2003, LB 242, § 32; Laws 2007, LB296, § 323; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

Cross Reference

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

(k) PRACTICE OF PODIATRY

71-173 Transferred to section 38-3006.

71-174 Transferred to section 38-3007.

71-174.01 **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-174.02 Transferred to section 38-3011.

71-175 Transferred to section 38-3008.

71-175.01 **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-176 Transferred to section 38-3010.

71-176.01 Transferred to section 38-3012.

71-176.03 **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

(l) PRACTICE OF CHIROPRACTIC

71-177 Transferred to section 38-805.

71-178 Transferred to section 38-806.

71-179 Transferred to section 38-807.

71-179.01 **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-180 Transferred to section 38-803.

71-181 Reciprocal licensing; when authorized. The department may in its discretion dispense with the examination in case of a chiropractor duly authorized to practice chiropractic in any other state, territory, or the District of Columbia, maintaining standards established by law or by duly authorized rules, equal to those of Nebraska, and who presents a certificate or license based on written examination issued by the proper authority of such other state, territory, or the District of Columbia.

Source: Laws 1927, c. 167, § 80, p. 475; C.S.1929, § 71-1105; R.S.1943, § 71-181; Laws 1996, LB 1044, § 406; Laws 2007, LB296, § 324; Laws 2007, LB463, § 250.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 250, and transferred to section 38-809 operative on December 1, 2008.

71-182 Transferred to section 38-811.

(m) PRACTICE OF DENTISTRY

71-183 Transferred to section 38-1115.

71-183.01 Transferred to section 38-1116.

71-183.02 Transferred to section 38-1107.

71-184 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-185 Transferred to section 38-1117.

71-185.01 Transferred to section 38-1125.

71-185.02 Transferred to section 38-1123.

71-185.03 Transferred to section 38-1124.

71-186 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-188 Dentists; change of address; notice to department. When a person licensed to practice dentistry in this state changes his or her place of residence, he or she shall forthwith notify the department of such change, which shall be noted in the records of the department.

Source: Laws 1927, c. 167, § 87, p. 478; C.S.1929, § 71-1206; R.S.1943, § 71-188; Laws 1996, LB 1044, § 410; Laws 2007, LB296, § 325; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

71-189 Transferred to section 38-1127.

71-190 Transferred to section 38-1128.

71-191 Transferred to section 38-1129.

71-193.01 Office of Oral Health and Dentistry; Dental Health Director; appointment. There is hereby established the Office of Oral Health and Dentistry in the department. The head of such office shall be known as the Dental Health Director and shall be appointed by the department. The Dental Health Director shall give full time to his or her duties.

Source: Laws 1949, c. 201, § 1, p. 584; Laws 1953, c. 239, § 1, p. 828; Laws 1996, LB 1044, § 411; Laws 2006, LB 994, § 82; Laws 2007, LB296, § 326; Laws 2007, LB463, § 482.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 482, and transferred to section 38-1149 operative on December 1, 2008.

71-193.02 Transferred to section 38-1150.

71-193.03 Transferred to section 38-1151.

71-193.04 Transferred to section 38-1118.

71-193.05 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-193.13 Dental assistants; employment; duties performed. Any licensed dentist, public institution, or school may employ dental assistants, in addition to licensed dental hygienists. Such dental assistants, under the supervision of a licensed dentist, may perform such duties as are prescribed in accordance with rules and regulations adopted and promulgated by the department.

Source: Laws 1971, LB 587, § 13; Laws 1986, LB 572, § 1; Laws 1996, LB 1044, § 413; Laws 1999, LB 800, § 3; Laws 2007, LB296, § 327; Laws 2007, LB463, § 468.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 468, and transferred to section 38-1135 operative on December 1, 2008.

71-193.14 Transferred to section 38-1136.

71-193.15 Licensed dental hygienist; functions authorized; when. (1) Except as otherwise provided in this section, a licensed dental hygienist shall perform the dental hygiene functions listed in section 71-193.17 only when authorized to do so by a licensed dentist who shall be responsible for the total oral health care of the patient.

(2) The department may authorize a licensed dental hygienist to perform the following functions in the conduct of public health-related services in a public health setting or in a health care or related facility: Preliminary charting and screening examinations; oral health

education, including workshops and inservice training sessions on dental health; and all of the duties that any dental assistant is authorized to perform.

(3)(a) The department may authorize a licensed dental hygienist with three thousand hours of clinical experience in at least four of the preceding five calendar years to perform the following functions in the conduct of public health-related services in a public health setting or in a health care or related facility: Oral prophylaxis to healthy children who do not require antibiotic premedication; pulp vitality testing; and preventive measures, including the application of fluorides, sealants, and other recognized topical agents for the prevention of oral disease.

(b) Authorization shall be granted by the department under this subsection upon (i) filing an application with the department, (ii) providing evidence of current licensure and professional liability insurance coverage, and (iii) providing evidence of clinical experience as required under subdivision (a) of this subsection. Authorization may be limited by the department as necessary to protect the public health and safety upon good cause shown and may be renewed in connection with renewal of the dental hygienist's license.

(c) A licensed dental hygienist performing dental hygiene functions as authorized under this subsection shall (i) report authorized functions performed by him or her to the department and (ii) advise the patient or recipient of services or his or her authorized representative that such services are preventive in nature and do not constitute a comprehensive dental diagnosis and care.

(4) For purposes of this section:

(a) Health care or related facility means a hospital, a nursing facility, an assisted-living facility, a correctional facility, a tribal clinic, or a school-based preventive health program; and

(b) Public health setting means a federal, state, or local public health department or clinic, community health center, rural health clinic, or other similar program or agency that serves primarily public health care program recipients.

Source: Laws 1986, LB 572, § 2; Laws 1996, LB 1044, § 415; Laws 1999, LB 800, § 5; Laws 2007, LB247, § 24; Laws 2007, LB296, § 328; Laws 2007, LB463, § 463.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 247, section 24, with LB 296, section 328, to reflect all amendments. This section was also amended by Laws 2007, LB 463, section 463, and transferred to section 38-1130 operative on December 1, 2008.

Note: The changes made by LB 247 became operative June 1, 2007. The changes made by LB 296 became operative July 1, 2007.

71-193.16 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-193.17 Licensed dental hygienist; procedures and functions authorized; enumerated. When authorized by and under the general supervision of a licensed dentist, a licensed dental hygienist may perform the following intra and extra oral procedures and functions:

- (1) Oral prophylaxis, periodontal scaling, and root planing which includes supragingival and subgingival debridement;
- (2) Polish all exposed tooth surfaces, including restorations;
- (3) Conduct and assess preliminary charting, probing, screening examinations, and indexing of dental and periodontal disease, with referral, when appropriate, for a dental diagnosis by a licensed dentist;
- (4) Brush biopsies;
- (5) Pulp vitality testing;
- (6) Gingival curettage;
- (7) Removal of sutures;
- (8) Preventive measures, including the application of fluorides, sealants, and other recognized topical agents for the prevention of oral disease;
- (9) Impressions for study casts;
- (10) Application of topical and subgingival agents;
- (11) Radiographic exposures;
- (12) Oral health education, including conducting workshops and inservice training sessions on dental health;
- (13) Application or administration of antimicrobial rinses, fluorides, and other anticariogenic agents; and
- (14) All of the duties that any dental assistant is authorized to perform.

Source: Laws 1986, LB 572, § 3; Laws 1999, LB 800, § 7; Laws 2007, LB247, § 25; Laws 2007, LB463, § 464.
Operative date June 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 464, and transferred to section 38-1131 operative on December 1, 2008.

71-193.18 Licensed dental hygienist; monitor analgesia; administer local anesthesia; when. (1) A licensed dental hygienist may monitor nitrous oxide analgesia under the indirect supervision of a licensed dentist.

(2) A licensed dental hygienist may be approved by the department, upon the recommendation of the Board of Dentistry, to administer local anesthesia under the indirect supervision of a licensed dentist. The department may, upon the recommendation of the board, prescribe by rule and regulation: The necessary education and preparation, which shall include, but not be limited to, instruction in the areas of head and neck anatomy, osteology, physiology, pharmacology, medical emergencies, and clinical techniques; the necessary clinical experience; and the necessary examination for purposes of determining the competence of licensed dental hygienists to administer local anesthesia.

Upon the recommendation of the board, the department may approve successful completion after July 1, 1994, of a course of instruction to determine competence to administer local anesthesia. The course of instruction must be at an institution accredited by a regional or professional accrediting organization which is recognized by the United States Department of Education and approved by the Division of Public Health of the Department of Health and

Human Services. The course of instruction must be taught by a faculty member or members of the institution presenting the course. The department may approve for purposes of this subsection a course of instruction if such course includes:

(a) At least twelve clock hours of classroom lecture, including instruction in (i) medical history evaluation procedures, (ii) anatomy of the head, neck, and oral cavity as it relates to administering local anesthetic agents, (iii) pharmacology of local anesthetic agents, vasoconstrictor, and preservatives, including physiologic actions, types of anesthetics, and maximum dose per weight, (iv) systemic conditions which influence selection and administration of anesthetic agents, (v) signs and symptoms of reactions to local anesthetic agents, including monitoring of vital signs, (vi) management of reactions to or complications associated with the administration of local anesthetic agents, (vii) selection and preparation of the armamentaria for administering various local anesthetic agents, and (viii) methods of administering local anesthetic agents;

(b) At least twelve clock hours of clinical instruction during which time at least three injections of each of the anterior, middle and posterior superior alveolar, naso and greater palatine, inferior alveolar, lingual, mental, long buccal, and infiltration injections are administered; and

(c) Procedures, which shall include an examination, for purposes of determining whether the hygienist has acquired the necessary knowledge and proficiency to administer local anesthetic agents.

Source: Laws 1986, LB 572, § 4; Laws 1995, LB 449, § 1; Laws 1996, LB 1044, § 416; Laws 1999, LB 800, § 8; Laws 1999, LB 828, § 75; Laws 2003, LB 242, § 37; Laws 2007, LB296, § 329; Laws 2007, LB463, § 465.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 465, and transferred to section 38-1132 operative on December 1, 2008.

71-193.19 Department; additional procedures; rules and regulations. The department may, by rule and regulation, prescribe functions, procedures, and services in addition to those in section 71-193.17 which may be performed by a licensed dental hygienist under the supervision of a licensed dentist when such additional procedures are educational or related to the oral prophylaxis and intended to attain or maintain optimal oral health.

Source: Laws 1986, LB 572, § 6; Laws 1996, LB 1044, § 417; Laws 2007, LB296, § 330; Laws 2007, LB463, § 466.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 466, and transferred to section 38-1133 operative on December 1, 2008.

71-193.20 Transferred to section 38-1134.

71-193.21 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-193.22 Terms, defined. As used in the Dental Anesthesia Act, unless the context otherwise requires:

- (1) Analgesia shall mean the diminution or elimination of pain in the conscious patient;
- (2) Board shall mean the Board of Dentistry;
- (3) Department shall mean the Division of Public Health of the Department of Health and Human Services;
- (4) General anesthesia shall mean a controlled state of unconsciousness accompanied by a partial or complete loss of protective reflexes, including the inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, and produced by a pharmacologic or nonpharmacologic method or a combination thereof;
- (5) Inhalation analgesia shall mean the administration of nitrous oxide and oxygen to diminish or eliminate pain in a conscious patient;
- (6) Parenteral shall mean administration other than through the digestive tract, including, but not limited to, intravenous administration; and
- (7) Sedation shall mean a depressed level of consciousness in which the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command is retained and which is produced by a pharmacologic or nonpharmacologic method or a combination thereof.

Source: Laws 1986, LB 438, § 2; Laws 1996, LB 1044, § 419; Laws 1999, LB 828, § 77; Laws 2007, LB296, § 331; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

71-193.23 Transferred to section 38-1137.

71-193.24 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-193.25 Transferred to section 38-1138.

71-193.26 Transferred to section 38-1139.

71-193.27 Transferred to section 38-1140.

71-193.28 Transferred to section 38-1142.

71-193.29 Transferred to section 38-1141.

71-193.30 Transferred to section 38-1144.

71-193.31 Transferred to section 38-1145.

71-193.32 Transferred to section 38-1146.

71-193.33 Transferred to section 38-1143.

71-193.34 Transferred to section 38-1147.

71-193.35 Transferred to section 38-1148.

(o) PRACTICE OF MEDICINE AND SURGERY

71-1,102 Transferred to section 38-2024.

71-1,103 Transferred to section 38-2025.

71-1,104 Medicine and surgery; license; qualifications; foreign medical graduates; waiver; requirements; department; powers. (1) Each applicant for a license to practice medicine and surgery shall:

(a)(i) Present proof that he or she is a graduate of an accredited school or college of medicine, (ii) if a foreign medical graduate, provide a copy of a permanent certificate issued by the Educational Commission on Foreign Medical Graduates that is currently effective and relates to such applicant or provide such credentials as are necessary to certify that such foreign medical graduate has successfully passed the Visa Qualifying Examination or its successor or equivalent examination required by the United States Department of Health and Human Services and the United States Immigration and Naturalization Service, or (iii) if a graduate of a foreign medical school who has successfully completed a program of American medical training designated as the Fifth Pathway and who additionally has successfully passed the Educational Commission on Foreign Medical Graduates examination but has not yet received the permanent certificate attesting to the same, provide such credentials as certify the same to the Division of Public Health of the Department of Health and Human Services;

(b) Present proof that he or she has served at least one year of graduate medical education approved by the Board of Medicine and Surgery or, if a foreign medical graduate, present proof that he or she has served at least three years of graduate medical education approved by the board;

(c) Pass a licensing examination designated by the board and the department covering appropriate medical subjects; and

(d) Present proof satisfactory to the board that he or she, within the three years immediately preceding the application for licensure, (i) has been in the active practice of the profession of medicine and surgery in some other state, a territory, the District of Columbia, or Canada for a period of one year, (ii) has had at least one year of graduate medical education as described in subdivision (1)(b) of this section, (iii) has completed continuing education in medicine and surgery approved by the board, (iv) has completed a refresher course in medicine and surgery approved by the board, or (v) has completed the special purposes examination approved by the board.

(2) The department, upon the recommendation of the board, may waive any requirement for more than one year of approved graduate medical education, as set forth in subdivision (1)(b) of this section, if the applicant has served at least one year of graduate medical education approved by such board and if the following conditions are met:

(a) The applicant meets all other qualifications for a license to practice medicine and surgery;

(b) The applicant submits satisfactory proof that the issuance of a license based on the waiver of the requirement of more than one year of approved graduate medical education will not jeopardize the health, safety, and welfare of the citizens of this state; and

(c) The applicant submits proof that he or she will enter into the practice of medicine in a health profession shortage area designated as such by the Nebraska Rural Health Advisory Commission immediately upon obtaining a license to practice medicine and surgery based upon a waiver of the requirement for more than one year of graduate medical education.

(3) A license issued on the basis of such a waiver shall be subject to the limitation that the licensee continue in practice in the health profession shortage area and such other limitations, if any, deemed appropriate under the circumstances by the director, upon recommendation of the board, which may include, but shall not be limited to, supervision by a medical practitioner, training, education, and scope of practice. After two years of practice under a limited license issued on the basis of a waiver of the requirement of more than one year of graduate medical education, a licensee may apply to the department for removal of the limitations. The director, upon the recommendation of the board, may grant or deny such application or may continue the license with limitations.

(4) In addition to any other grounds for disciplinary action against the license contained in the Uniform Licensing Law, the department may take disciplinary action against a license granted on the basis of a waiver of the requirement of more than one year of graduate medical education for violation of the limitations on the license. The department, upon the recommendation of the board, shall adopt and promulgate rules and regulations for the purpose of implementing and administering this section.

Source: Laws 1927, c. 167, § 102, p. 483; C.S.1929, § 71-1403; Laws 1943, c. 150, § 20, p. 548; R.S.1943, § 71-1,104; Laws 1963, c. 408, § 6, p. 1312; Laws 1969, c. 563, § 3, p. 2293; Laws 1971, LB 150, § 2; Laws 1975, LB 92, § 3; Laws 1976, LB 877, § 25; Laws 1978, LB 761, § 1; Laws 1985, LB 250, § 13; Laws 1987, LB 390, § 1; Laws 1990, LB 1064, § 13; Laws 1991, LB 400, § 22; Laws 1994, LB 1210, § 56; Laws 1994, LB 1223, § 14; Laws 1996, LB 1044, § 421; Laws 1999, LB 828, § 79; Laws 2002, LB 1062, § 18; Laws 2003, LB 242, § 39; Laws 2007, LB296, § 332; Laws 2007, LB463, § 684.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 684, and transferred to section 38-2026 operative on December 1, 2008.

71-1,104.01 Physician; genetic tests; written informed consent; requirements; department; duty. (1) Except as provided in section 71-519 and except for newborn screening tests ordered by physicians to comply with the law of the state in which the infant was born, a physician or an individual to whom the physician has delegated authority to

perform a selected act, task, or function shall not order a predictive genetic test without first obtaining the written informed consent of the patient to be tested. Written informed consent consists of a signed writing executed by the patient or the representative of a patient lacking decisional capacity that confirms that the physician or individual acting under the delegated authority of the physician has explained, and the patient or his or her representative understands:

- (a) The nature and purpose of the predictive genetic test;
- (b) The effectiveness and limitations of the predictive genetic test;
- (c) The implications of taking the predictive genetic test, including the medical risks and benefits;
- (d) The future uses of the sample taken to conduct the predictive genetic test and the genetic information obtained from the predictive genetic test;
- (e) The meaning of the predictive genetic test results and the procedure for providing notice of the results to the patient; and
- (f) Who will have access to the sample taken to conduct the predictive genetic test and the genetic information obtained from the predictive genetic test, and the patient's right to confidential treatment of the sample and the genetic information.

(2) The department shall develop and distribute a model informed consent form for purposes of this section. The department shall include in the model form all of the information required under subsection (1) of this section. The department shall distribute the model form and all revisions to the form to physicians and other individuals subject to this section upon request and at no charge. The department shall review the model form at least annually for five years after the first model form is distributed and shall revise the model form if necessary to make the form reflect the latest developments in medical genetics. The department may also develop and distribute a pamphlet that provides further explanation of the information included in the model form.

(3) If a patient or his or her representative signs a copy of the model informed consent form developed and distributed under subsection (2) of this section, the physician or individual acting under the delegated authority of the physician shall give the patient a copy of the signed informed consent form and shall include the original signed informed consent form in the patient's medical record.

(4) If a patient or his or her representative signs a copy of the model informed consent form developed and distributed under subsection (2) of this section, the patient is barred from subsequently bringing a civil action for damages against the physician, or an individual to whom the physician delegated authority to perform a selected act, task, or function, who ordered the predictive genetic test, based upon failure to obtain informed consent for the predictive genetic test.

(5) A physician's duty to inform a patient under this section does not require disclosure of information beyond what a physician reasonably well-qualified to order and interpret the predictive genetic test would know. A person acting under the delegated authority of a

physician shall understand and be qualified to provide the information required by subsection (1) of this section.

(6) For purposes of this section:

(a) Genetic information means information about a gene, gene product, or inherited characteristic derived from a genetic test;

(b) Genetic test means the analysis of human DNA, RNA, chromosomes, epigenetic status, and those tissues, proteins, and metabolites used to detect heritable or somatic disease-related genotypes or karyotypes for clinical purposes. Tests of tissues, proteins, and metabolites are included only when generally accepted in the scientific and medical communities as being specifically determinative of a heritable or somatic disease-related genetic condition. Genetic test does not include a routine analysis, including a chemical analysis, of body fluids or tissues unless conducted specifically to determine a heritable or somatic disease-related genetic condition. Genetic test does not include a physical examination or imaging study. Genetic test does not include a procedure performed as a component of biomedical research that is conducted pursuant to federal common rule under 21 C.F.R. parts 50 and 56 and 45 C.F.R. part 46, as such regulations existed on January 1, 2003; and

(c) Predictive genetic test means a genetic test for an otherwise undetectable genotype or karyotype relating to the risk for developing a genetically related disease or disability, the results of which can be used to substitute a patient's prior risk based on population data or family history with a risk based on genotype or karyotype. Predictive genetic test does not include diagnostic testing conducted on a person exhibiting clinical signs or symptoms of a possible genetic condition. Predictive genetic testing does not include prenatal genetic diagnosis, unless the prenatal testing is conducted for an adult-onset condition not expected to cause clinical signs or symptoms before the age of majority.

Source: Laws 2001, LB 432, § 1; Laws 2003, LB 119, § 1; Laws 2005, LB 301, § 10; Laws 2006, LB 994, § 85; Laws 2007, LB296, § 333; Laws 2007, LB463, § 1183.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 1183, and transferred to section 71-551 operative on December 1, 2008.

71-1,104.06 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,105 Transferred to section 38-2004.

71-1,106 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,106.01 Medicine and surgery; examination; retaking examination; time. Applicants for licensure in medicine and surgery and osteopathic medicine and surgery shall pass the licensing examination. An applicant who fails to pass any part of the licensing examination within four attempts shall complete one additional year of postgraduate medical education at an accredited school or college of medicine or osteopathic medicine.

All parts of the licensing examination shall be successfully completed within ten years. An applicant who fails to successfully complete the licensing examination within the time allowed shall retake that part of the examination which was not completed within the time allowed.

Source: Laws 2007, LB481, § 4.
Effective date May 17, 2007.

71-1,107 Medicine and surgery; examination; waiver; when authorized; fee. The department may accept in lieu of the examination provided in section 71-1,104 a certificate of examination issued by the National Board of Medical Examiners of the United States of America, but every applicant for a license upon the basis of such certificate shall be required to pay the fees prescribed for licenses issued in medicine and surgery without examination based upon a license by examination held in another state, territory, or the District of Columbia.

Source: Laws 1927, c. 167, § 105, p. 484; C.S.1929, § 71-1406; R.S.1943, § 71-1,107; Laws 1969, c. 563, § 9, p. 2296; Laws 1996, LB 1044, § 424; Laws 2007, LB296, § 334; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

71-1,107.01 Transferred to section 38-2002.

71-1,107.02 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,107.03 Transferred to section 38-2038.

71-1,107.04 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,107.05 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,107.06 Temporary educational or visiting faculty permit; duration; renewal. The duration of any permit issued pursuant to sections 71-1,107.01 to 71-1,107.14 shall be determined by the department but in no case shall it be in excess of one year. The permit may be renewed from time to time at the discretion of the department but in no case shall it be renewed for more than five one-year periods. The department may issue to all qualified graduates of accredited colleges of medicine or accredited schools or colleges of osteopathic medicine, who are eligible for the examination provided in section 71-1,104, and who make application for such examination, a temporary educational permit, without charge. Such permit shall be issued only for the duration of the time between the date of the examination and the date of licensure granted as a result of such examination. Any person issued a temporary educational permit without charge shall meet all requirements provided for in sections 71-1,107.01 to 71-1,107.14, except the required fee, and such exemption is

only for the period of time between the examination date and the licensing date and for only those individuals who take the examination as provided in section 71-1,104.

Source: Laws 1969, c. 560, § 12, p. 2284; Laws 1971, LB 150, § 9; Laws 1989, LB 342, § 18; Laws 1996, LB 1044, § 429; Laws 2007, LB296, § 335; Laws 2007, LB463, § 700.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 700, and transferred to section 38-2042 operative on December 1, 2008.

71-1,107.07 Temporary educational permit; application; designate educational program. Before granting any temporary educational permit, the department shall ascertain by evidence satisfactory to such board that an accredited hospital or school or college of medicine in the State of Nebraska has requested the issuance of a temporary educational permit for an applicant to serve as a graduate student in its approved program for the period involved and any application for the issuance of such permit shall be signed by the applicant requesting that such permit be issued to him or her and shall designate the specified approved graduate medical educational program with respect to which such permit shall apply.

Source: Laws 1969, c. 560, § 13, p. 2284; Laws 1971, LB 150, § 10; Laws 1996, LB 1044, § 430; Laws 2007, LB296, § 336; Laws 2007, LB463, § 697.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 697, and transferred to section 38-2039 operative on December 1, 2008.

71-1,107.08 Visiting faculty permit; application; contents. Before a visiting faculty permit shall be issued, the department shall determine on the basis of evidence satisfactory to the department that an accredited school or college of medicine in the State of Nebraska has requested issuance of such visiting faculty permit for the individual involved to serve as a member of the faculty of such school or college of medicine and that the applicant for such permit has met the requirements of sections 71-1,107.01 to 71-1,107.14. Any application for issuing a visiting faculty permit shall be signed by the applicant to whom such permit is to be issued and shall designate the accredited school or college of medicine where such applicant proposes to serve as a member of the faculty and shall outline the faculty duties to be performed pursuant to the permit.

Source: Laws 1969, c. 560, § 14, p. 2284; Laws 1971, LB 150, § 11; Laws 1996, LB 1044, § 431; Laws 2007, LB296, § 337; Laws 2007, LB463, § 698.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 698, and transferred to section 38-2040 operative on December 1, 2008.

71-1,107.09 Transferred to section 38-2041.

71-1,107.10 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,107.11 Transferred to section 38-2043.

71-1,107.12 **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,107.13 Transferred to section 38-2044.

71-1,107.14 Transferred to section 38-2045.

71-1,107.15 Transferred to section 38-2046.

71-1,107.16 Physician assistants; terms, defined. For purposes of sections 71-1,107.15 to 71-1,107.30, unless the context otherwise requires:

(1) Approved program means a program for the education of physician assistants which the board formally approves;

(2) Board means the Board of Medicine and Surgery;

(3) Department means the Division of Public Health of the Department of Health and Human Services;

(4) Physician assistant means any person who graduates from a program approved by the Commission on Accreditation of Allied Health Education Programs or its predecessor or successor agency and the board, who satisfactorily completes a proficiency examination, and whom the board, with the concurrence of the department, approves to perform medical services under the supervision of a physician or group of physicians approved by the board to supervise such assistant;

(5) Supervision means the ready availability of the supervising physician for consultation and direction of the activities of the physician assistant. Contact with the supervising physician by telecommunication shall be sufficient to show ready availability if the board finds that such contact is sufficient to provide quality medical care. The level of supervision may vary by geographic location as provided in section 71-1,107.17;

(6) Trainee means any person who is currently enrolled in an approved program;

(7) Proficiency examination means the initial proficiency examination approved by the board for the licensure of physician assistants, including, but not limited to, the examination administered by the National Commission on Certification of Physician Assistants or other national organization established for such purpose that is recognized by the board;

(8) Supervising physician means a (a) board-approved physician who utilizes an approved physician assistant or (b) backup physician;

(9) Backup physician means a physician designated by the supervising physician to ensure supervision of the physician assistant in the supervising physician's absence. A backup physician shall be subject to the same requirements imposed upon the supervising physician when the backup physician is acting as a supervising physician; and

(10) Committee means the Physician Assistant Committee created in section 71-1,107.25.

Source: Laws 1973, LB 101, § 2; R.S.Supp.,1973, § 85-179.05; Laws 1985, LB 132, § 2; Laws 1993, LB 316, § 1; Laws 1996, LB 1044, § 436; Laws 1996, LB 1108, § 8; Laws 1999, LB 828, § 92; Laws 2001, LB 209, § 8; Laws 2007, LB296, § 338; Laws 2007, LB463, § 672.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 672, and transferred to section 38-2014 operative on December 1, 2008.

71-1,107.17 Transferred to section 38-2047.

71-1,107.18 Transferred to section 38-2048.

71-1,107.19 Transferred to section 38-2049.

71-1,107.20 Transferred to section 38-2050.

71-1,107.21 Transferred to section 38-2052.

71-1,107.23 Transferred to section 38-2051.

71-1,107.24 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,107.25 Transferred to section 38-2056.

71-1,107.26 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,107.27 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,107.28 Transferred to section 38-2053.

71-1,107.29 Transferred to section 38-2054.

71-1,107.30 Transferred to section 38-2055.

(p) PRACTICE OF NURSING

71-1,132.01 Transferred to section 38-2201.

71-1,132.04 Transferred to section 38-2217.

71-1,132.05 Nursing; terms, defined. For purposes of the Nurse Practice Act, unless the context otherwise requires:

- (1) Executive director means the executive director of the Board of Nursing;
- (2) Board means the Board of Nursing;
- (3) License by endorsement means the granting of active status and the authority to practice to an individual who has been licensed in another jurisdiction;

(4) License by examination means the authority to practice is based on an assessment of minimum competency by such means as the board may determine;

(5) License, for purposes of discipline, includes the multistate licensure privilege to practice granted by the Nurse Licensure Compact. If the multistate licensure privilege is restricted due to disciplinary action by the home state, the department may, upon request by the individual, grant the authority to practice in this state;

(6) Licensed practitioner means a person lawfully authorized to prescribe medications or treatments;

(7) The practice of nursing means the performance for compensation or gratuitously of any act expressing judgment or skill based upon a systematized body of nursing knowledge. Such acts include the identification of and intervention in actual or potential health problems of individuals, families, or groups, which acts are directed toward maintaining health status, preventing illness, injury, or infirmity, improving health status, and providing care supportive to or restorative of life and well-being through nursing assessment and through the execution of nursing care and of diagnostic or therapeutic regimens prescribed by any person lawfully authorized to prescribe. Each nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. Licensed nurses may use the services of unlicensed individuals to provide assistance with personal care and activities of daily living;

(8) The practice of nursing by a registered nurse means assuming responsibility and accountability for nursing actions which include, but are not limited to:

- (a) Assessing human responses to actual or potential health conditions;
 - (b) Establishing nursing diagnoses;
 - (c) Establishing goals and outcomes to meet identified health care needs;
 - (d) Establishing and maintaining a plan of care;
 - (e) Prescribing nursing interventions to implement the plan of care;
 - (f) Implementing the plan of care;
 - (g) Teaching health care practices;
 - (h) Delegating, directing, or assigning nursing interventions that may be performed by others and that do not conflict with the act;
 - (i) Maintaining safe and effective nursing care rendered directly or indirectly;
 - (j) Evaluating responses to interventions, including, but not limited to, performing physical and psychological assessments of patients under restraint and seclusion as required by federal law, if the registered nurse has been trained in the use of emergency safety intervention;
 - (k) Teaching theory and practice of nursing;
 - (l) Conducting, evaluating, and utilizing nursing research;
 - (m) Administering, managing, and supervising the practice of nursing; and
 - (n) Collaborating with other health professionals in the management of health care;
- (9) The practice of nursing by a licensed practical nurse means the assumption of responsibilities and accountability for nursing practice in accordance with knowledge and skills acquired through an approved program of practical nursing. A licensed practical

nurse may function at the direction of a licensed practitioner or a registered nurse. Such responsibilities and performances of acts must utilize procedures leading to predictable outcomes and must include, but not be limited to:

- (a) Contributing to the assessment of the health status of individuals and groups;
 - (b) Participating in the development and modification of a plan of care;
 - (c) Implementing the appropriate aspects of the plan of care;
 - (d) Maintaining safe and effective nursing care rendered directly or indirectly;
 - (e) Participating in the evaluation of response to interventions; and
 - (f) Assigning and directing nursing interventions that may be performed by others and that do not conflict with the act;
- (10) Department means the Division of Public Health of the Department of Health and Human Services;
- (11) Director means the Director of Public Health of the Division of Public Health;
- (12) Inactive status means the designation given to a licensee who requests this status and pays the fee. A licensee on inactive status is issued a card indicating inactive status but shall not practice;
- (13) Lapsed status means the designation given to a licensee who requests this status. A licensee on lapsed status shall not practice;
- (14) Expiration date means the date on which the license expires has passed. The licensee whose license has expired shall not practice;
- (15) Suspended means the licensee's authority to practice has been temporarily removed as a result of disciplinary action;
- (16) Revoked means the licensee's authority to practice has been removed as a result of disciplinary action. The licensee may apply for reinstatement of his or her license two years or more after the date of revocation;
- (17) Reinstatement means the return to active status and the restoration of the authority to practice to a licensee who was previously licensed in this state;
- (18) Verification means attesting to the current status of an individual's license;
- (19) Certification means attesting to the current status of an individual's license, any disciplinary action taken, and the means by which the individual was licensed;
- (20) Probation means that the individual's authority to practice is contingent on the licensee meeting specified conditions imposed as a result of disciplinary action;
- (21) Limited license means that certain restrictions have been imposed on the individual's authority to practice as a result of disciplinary action;
- (22) Assignment means appointing or designating another individual the responsibility for the performance of nursing interventions;
- (23) Delegation means transferring to another individual the authority, responsibility, and accountability to perform nursing interventions; and
- (24) Direction means managing, guiding, and supervising the nursing interventions performed by another individual.

Source: Laws 1953, c. 245, § 2, p. 836; Laws 1955, c. 272, § 1, p. 854; Laws 1959, c. 320, § 1, p. 1171; Laws 1975, LB 422, § 2; Laws 1980, LB 847, § 2; Laws 1981, LB 379, § 35; Laws 1989, LB 342, § 19; Laws 1992, LB 1019, § 42; Laws 1995, LB 563, § 7; Laws 1996, LB 1044, § 437; Laws 2000, LB 523, § 5; Laws 2005, LB 256, § 24; Laws 2007, LB296, § 339; Laws 2007, LB463, § 1319. Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

Cross Reference

Nurse Licensure Compact, see section 71-1795.

- 71-1,132.06** Transferred to section 38-2218.
- 71-1,132.07** Transferred to section 38-2213.
- 71-1,132.08** Transferred to section 38-2214.
- 71-1,132.09** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-1,132.10** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-1,132.11** Transferred to section 38-2216.
- 71-1,132.12** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-1,132.13** Transferred to section 38-2220.
- 71-1,132.14** Transferred to section 38-2222.
- 71-1,132.15** Transferred to section 38-2223.
- 71-1,132.16** Transferred to section 38-2225.
- 71-1,132.17** Transferred to section 38-2228.
- 71-1,132.18** Transferred to section 38-2229.
- 71-1,132.19** Transferred to section 38-2224.
- 71-1,132.20** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-1,132.21** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-1,132.24** Transferred to section 38-2232.

- 71-1,132.25** Transferred to section 38-2233.
- 71-1,132.26** Transferred to section 38-2234.
- 71-1,132.27** Transferred to section 38-2235.
- 71-1,132.28** Transferred to section 38-2236.
- 71-1,132.29** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-1,132.30** Transferred to section 38-2219.
- 71-1,132.31** Transferred to section 38-2215.
- 71-1,132.35** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-1,132.36** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-1,132.37** Transferred to section 38-2221.
- 71-1,132.38** Transferred to section 38-2231.
- 71-1,132.41** Transferred to section 38-2230.
- 71-1,132.48** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,132.53 **Nursing; department; powers and duties.** The department shall:

- (1) Conduct hearings upon charges of suspension or revocation of a license;
- (2) Have power to issue subpoenas and compel the attendance of witnesses and administer oaths to persons giving testimony at hearings;
- (3) Cause the prosecution of all persons violating the Nurse Practice Act and have power to incur the necessary expense; and
- (4) Establish fees for credentialing activities under the Nurse Practice Act as provided in section 71-162.

Source: Laws 1980, LB 847, § 25; Laws 1995, LB 563, § 37; Laws 1996, LB 1044, § 438; Laws 2003, LB 242, § 49; Laws 2007, LB296, § 340; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

(q) PRACTICE OF OPTOMETRY

71-1,133 **Practice of optometry, defined.** For purposes of the Uniform Licensing Law, the practice of optometry means one or a combination of the following:

(1) The examination of the human eye to diagnose, treat, or refer for consultation or treatment any abnormal condition of the human eye, ocular adnexa, or visual system;

(2) The employment of instruments, devices, pharmaceutical agents, and procedures intended for the purpose of investigating, examining, diagnosing, treating, managing, or correcting visual defects or abnormal conditions of the human eye, ocular adnexa, or visual system;

(3) The prescribing and application of lenses, devices containing lenses, prisms, contact lenses, ophthalmic devices, orthoptics, vision training, pharmaceutical agents, and prosthetic devices to correct, relieve, or treat defects or abnormal conditions of the human eye, ocular adnexa, or visual system;

(4) The ordering of procedures and laboratory tests rational to the diagnosis or treatment of conditions or diseases of the human eye, ocular adnexa, or visual system; and

(5) The removal of superficial eyelid, conjunctival, and corneal foreign bodies.

The practice of optometry does not include the use of surgery, laser surgery, oral therapeutic agents used in the treatment of glaucoma, oral steroids, or oral immunosuppressive agents or the treatment of infantile/congenital glaucoma, which means the condition is present at birth.

Source: Laws 1927, c. 167, § 111, p. 487; C.S.1929, § 71-1601; R.S.1943, § 71-1,133; Laws 1979, LB 9, § 1; Laws 1986, LB 131, § 1; Laws 1987, LB 116, § 1; Laws 1993, LB 429, § 2; Laws 1998, LB 369, § 1; Laws 2007, LB236, § 20; Laws 2007, LB463, § 877.
Effective date September 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 877, and transferred to section 38-2605 operative on December 1, 2008.

71-1,134 Practice of optometry; sections, how construed. The practice of optometry shall not be construed to:

(1) Include merchants or dealers who sell glasses as merchandise in an established place of business or who sell contact lenses from a prescription for contact lenses written by an optometrist or a person licensed to practice medicine and surgery and who do not profess to be optometrists or practice optometry;

(2) Restrict, expand, or otherwise alter the scope of practice governed by other statutes; or

(3) Include the performance by an optometric assistant, under the supervision of a licensed optometrist, of duties prescribed in accordance with rules and regulations adopted and promulgated by the department, with the recommendation of the Board of Optometry.

Source: Laws 1927, c. 167, § 112, p. 487; C.S.1929, § 71-1602; R.S.1943, § 71-1,134; Laws 1979, LB 9, § 2; Laws 1998, LB 369, § 2; Laws 2002, LB 1062, § 30; Laws 2007, LB236, § 21; Laws 2007, LB463, § 879.
Effective date September 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 879, and transferred to section 38-2607 operative on December 1, 2008.

71-1,135 Optometry; license; requirements. Every applicant for a license to practice optometry shall: (1) Present proof that he or she is a graduate of an accredited school or college of optometry; and (2) pass an examination approved by the Board of Optometry. The examination shall cover all subject matter included in the practice of optometry.

Source: Laws 1927, c. 167, § 113, p. 487; C.S.1929, § 71-1603; R.S.1943, § 71-1,135; Laws 1979, LB 9, § 3; Laws 1989, LB 323, § 3; Laws 1998, LB 369, § 3; Laws 1999, LB 828, § 95; Laws 2007, LB236, § 22; Laws 2007, LB463, § 880.
Effective date September 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 880, and transferred to section 38-2608 operative on December 1, 2008.

71-1,135.01 Transferred to section 38-2604.

71-1,135.02 Optometrist; pharmaceutical agents; use; certification; treatment of glaucoma. (1) An optometrist licensed in this state may use topical ocular pharmaceutical agents for diagnostic purposes authorized under subdivision (2) of section 71-1,133 if such person submits to the department the required fee and is certified by the department, with the recommendation of the Board of Optometry, as qualified to use topical ocular pharmaceutical agents for diagnostic purposes. Such certification shall require (a) satisfactory completion of a pharmacology course at an institution accredited by a regional or professional accrediting organization which is recognized by the United States Department of Education and approved by the board and passage of an examination approved by the board or (b) evidence provided by the optometrist of certification in another state for use of diagnostic pharmaceutical agents which is deemed by the board as satisfactory validation of such qualifications.

(2) An optometrist licensed in this state may use topical ocular pharmaceutical agents for therapeutic purposes authorized under subdivision (2) or (3) of section 71-1,133 if such person submits to the department the required fee and is certified by the department, with the recommendation of the Board of Optometry, as qualified to use ocular pharmaceutical agents for therapeutic purposes, including the treatment of glaucoma. Such certification shall require (a) satisfactory completion of classroom education and clinical training which emphasizes the examination, diagnosis, and treatment of the eye, ocular adnexa, and visual system offered by a school or college approved by the board and passage of an examination approved by the board or (b) evidence provided by the optometrist of certification in another state for the use of therapeutic pharmaceutical agents which is deemed by the board as satisfactory validation of such qualifications.

(3) After January 1, 2000, only an optometrist licensed in this state prior to April 30, 1987, may practice optometry without meeting the requirements and obtaining certification required by subsections (1) and (2) of this section.

Source: Laws 1979, LB 9, § 5; Laws 1986, LB 131, § 3; Laws 1987, LB 116, § 2; Laws 1988, LB 1100, § 41; Laws 1994, LB 987, § 1; Laws 1996, LB 1044, § 439; Laws 1998, LB 369, § 5; Laws 1999, LB 828, § 96; Laws 2003, LB 242, § 50; Laws 2007, LB236, § 23; Laws 2007, LB247, § 73; Laws 2007, LB296, § 341; Laws 2007, LB463, § 885.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 236, section 23, with LB 296, section 341, to reflect all amendments. This section was also amended by Laws 2007, LB 247, section 73, and LB 463, section 885, and transferred to section 38-2613 operative on December 1, 2008.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 236 became effective September 1, 2007.

71-1,135.03 Repealed. Laws 2007, LB 236, § 47.

Note: This section was amended by Laws 2007, LB 463, section 888, and repealed by Laws 2007, LB 236, section 47, and LB 247, section 91. The repeal by LB 236 became effective September 1, 2007, and the section has been deleted.

71-1,135.04 License; renewal; statement as to use of pharmaceutical agents. In issuing a license or renewal, the Board of Optometry shall state whether such person licensed in the practice of optometry has been certified to use pharmaceutical agents pursuant to section 71-1,135.02 and shall determine an appropriate means to further identify those persons who are certified in the diagnostic use of such agents or the therapeutic use of such agents.

Source: Laws 1979, LB 9, § 7; Laws 1986, LB 131, § 4; Laws 1993, LB 429, § 5; Laws 1998, LB 369, § 7; Laws 1999, LB 828, § 98; Laws 2007, LB236, § 24; Laws 2007, LB463, § 882.
Effective date September 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 882, and transferred to section 38-2610 operative on December 1, 2008.

71-1,135.05 Repealed. Laws 2007, LB 236, § 47.

Note: This section was amended by Laws 2007, LB 463, section 873, and repealed by Laws 2007, LB 236, section 47, and LB 247, section 91. The repeal by LB 236 became effective September 1, 2007, and the section has been deleted.

71-1,135.06 Use of pharmaceutical agents by licensed optometrist; standard of care. A licensed optometrist who administers or prescribes pharmaceutical agents for examination or for treatment shall provide the same standard of care to patients as that provided by a physician licensed in this state to practice medicine and surgery utilizing the same pharmaceutical agents for examination or treatment.

Source: Laws 1993, LB 429, § 3; Laws 1998, LB 369, § 8; Laws 2007, LB236, § 25; Laws 2007, LB463, § 890.
Effective date September 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 890, and transferred to section 38-2617 operative on December 1, 2008.

71-1,135.07 Transferred to section 38-2618.

71-1,136 Optometry; approved schools; requirements. No school of optometry shall be approved by the Board of Optometry as an accredited school unless the school is accredited by a regional or professional accrediting organization which is recognized by the United States Department of Education.

Source: Laws 1927, c. 167, § 114, p. 488; C.S.1929, § 71-1604; R.S.1943, § 71-1,136; Laws 1965, c. 415, § 1, p. 1325; Laws 1979, LB 9, § 8; Laws 1994, LB 987, § 3; Laws 1996, LB 1044, § 440; Laws 2007, LB236, § 26; Laws 2007, LB296, § 342; Laws 2007, LB463, § 889.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 236, section 26, with LB 296, section 342, to reflect all amendments. This section was also amended by Laws 2007, LB 463, section 889, and transferred to section 38-2616 operative on December 1, 2008.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 236 became effective September 1, 2007.

71-1,136.01 Optometry; license; renewal; continuing competency requirements. Each Nebraska-licensed optometrist in active practice within the State of Nebraska shall, on or before August 1 of each even-numbered year, complete continuing competency activities as required by the Board of Optometry pursuant to section 71-161.09 as a prerequisite for the licensee's next subsequent license renewal. In addition to circumstances determined by the department to be beyond the credential holder's control pursuant to section 71-161.10, such circumstances shall include situations in which the credential holder was initially licensed within the twenty-six months immediately preceding the renewal date.

Source: Laws 1965, c. 415, § 2, p. 1325; Laws 1985, LB 250, § 14; Laws 1986, LB 926, § 46; Laws 1988, LB 1100, § 42; Laws 1997, LB 307, § 123; Laws 1999, LB 828, § 99; Laws 2001, LB 209, § 10; Laws 2002, LB 1021, § 21; Laws 2007, LB236, § 27; Laws 2007, LB463, § 883.
Effective date September 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 883, and transferred to section 38-2611 operative on December 1, 2008.

71-1,136.03 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,136.04 Optometry; patient's freedom of choice. No agencies of the state or its subdivisions administering relief, public assistance, public welfare assistance, or other health service under the laws of this state, including the public schools, shall in the performance of their duties, interfere with any patient's freedom of choice in the selection of practitioners licensed to perform examinations and provide treatment within the field for which their respective licenses entitle them to practice.

Source: Laws 1967, c. 431, § 1, p. 1319; Laws 2007, LB236, § 28; Laws 2007, LB463, § 892.
Effective date September 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 892, and transferred to section 38-2619 operative on December 1, 2008.

Cross Reference

Provisions for insuring cost of service of optometrist, see section 44-513.

71-1,136.05 Transferred to section 38-2620.

71-1,136.06 Transferred to section 38-2621.

71-1,136.07 Transferred to section 38-2622.

71-1,136.08 Transferred to section 38-2623.

71-1,136.09 **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

(r) PRACTICE OF OSTEOPATHY

71-1,137 Transferred to section 38-2029.

71-1,138 Transferred to section 38-2030.

71-1,139 Transferred to section 38-2031.

71-1,139.01 Transferred to section 38-2032.

71-1,140 Transferred to section 38-2005.

71-1,141 **Osteopathic physician; license; scope.** With respect to licenses issued pursuant to sections 71-1,139 and 71-1,139.01 and any renewals thereof, the department shall designate the extent of such practice as follows:

- (1) License to practice as an osteopathic physician; or
- (2) License to practice osteopathic medicine and surgery.

Every license issued under sections 71-1,139 and 71-1,139.01 shall confer upon the holder thereof the right to practice osteopathic medicine and surgery as taught in the schools or colleges of osteopathic medicine recognized by the American Osteopathic Association in the manner and to the extent provided by such license.

Source: Laws 1927, c. 167, § 119, p. 490; C.S.1929, § 71-1705; R.S.1943, § 71-1,141; Laws 1969, c. 565, § 5, p. 2302; Laws 1989, LB 342, § 26; Laws 1996, LB 1044, § 446; Laws 2007, LB296, § 343; Laws 2007, LB463, § 691.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 691, and transferred to section 38-2033 operative on December 1, 2008.

(s) PRACTICE OF PHARMACY

71-1,142 **Terms, defined.** For purposes of sections 71-1,142 to 71-1,151 and elsewhere in the Uniform Licensing Law, unless the context otherwise requires:

(1) Practice of pharmacy means (a) the interpretation, evaluation, and implementation of a medical order, (b) the dispensing of drugs and devices, (c) drug product selection, (d) the administration of drugs or devices, (e) drug utilization review, (f) patient counseling, (g) the provision of pharmaceutical care, and (h) the responsibility for compounding and labeling of dispensed or repackaged drugs and devices, proper and safe storage of drugs and devices, and maintenance of proper records. The active practice of pharmacy means the performance of

the functions set out in this subdivision by a pharmacist as his or her principal or ordinary occupation;

(2) Administer means to directly apply a drug or device by injection, inhalation, ingestion, or other means to the body of a patient or research subject;

(3) Administration means the act of (a) administering, (b) keeping a record of such activity, and (c) observing, monitoring, reporting, and otherwise taking appropriate action regarding desired effect, side effect, interaction, and contraindication associated with administering the drug or device;

(4) Board means the Board of Pharmacy;

(5) Caregiver means any person acting as an agent on behalf of a patient or any person aiding and assisting a patient;

(6) Chart order means an order for a drug or device issued by a practitioner for a patient who is in the hospital where the chart is stored or for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412. Chart order does not include a prescription;

(7) Compounding means the preparation of components into a drug product (a) as the result of a practitioner's medical order or initiative occurring in the course of practice based upon the relationship between the practitioner, patient, and pharmacist or (b) for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing. Compounding includes the preparation of drugs or devices in anticipation of receiving medical orders based upon routine, regularly observed prescribing patterns;

(8) Delegated dispensing means the practice of pharmacy by which one or more pharmacists have jointly agreed, on a voluntary basis, to work in conjunction with one or more persons pursuant to sections 71-1,147.42 to 71-1,147.64 under a protocol which provides that such person may perform certain dispensing functions authorized by the pharmacist or pharmacists under certain specified conditions and limitations;

(9) Deliver or delivery means to actually, constructively, or attempt to transfer a drug or device from one person to another, whether or not for consideration;

(10) Department means the Division of Public Health of the Department of Health and Human Services;

(11) Device means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is prescribed by a practitioner and dispensed by a pharmacist or other person authorized by law to do so;

(12) Dialysis drug or device distributor means a manufacturer or wholesaler who provides dialysis drugs, solutions, supplies, or devices, to persons with chronic kidney failure for self-administration at the person's home or specified address, pursuant to a prescription;

(13) Dialysis drug or device distributor worker means a person working for a dialysis drug or device distributor with a delegated dispensing permit who has completed the approved training and has demonstrated proficiency to perform the task or tasks of assembling, labeling, or delivering drugs or devices pursuant to a prescription;

(14) Dispense or dispensing means interpreting, evaluating, and implementing a medical order, including preparing and delivering a drug or device to a patient or caregiver in a suitable container appropriately labeled for subsequent administration to, or use by, a patient. Dispensing includes (a) dispensing incident to practice, (b) dispensing pursuant to a delegated dispensing permit, (c) dispensing pursuant to a medical order, and (d) any transfer of a prescription drug or device to a patient or caregiver other than by administering;

(15) Distribute means to deliver a drug or device, other than by administering or dispensing;

(16) Facility means a health care facility as defined in section 71-413;

(17) Hospital has the same meaning as in section 71-419;

(18) Person means an individual, corporation, partnership, limited liability company, association, or other legal entity;

(19) Labeling means the process of preparing and affixing a label to any drug container or device container, exclusive of the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal and state law or regulation;

(20) Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

(21) Pharmaceutical care means the provision of drug therapy for the purpose of achieving therapeutic outcomes that improve a patient's quality of life. Such outcomes include (a) the cure of disease, (b) the elimination or reduction of a patient's symptomatology, (c) the arrest or slowing of a disease process, or (d) the prevention of a disease or symptomatology. Pharmaceutical care includes the process through which the pharmacist works in concert with the patient and his or her caregiver, physician, or other professionals in designing, implementing, and monitoring a therapeutic plan that will produce specific therapeutic outcomes for the patient;

(22) Pharmacist means any person who is licensed by the State of Nebraska to practice pharmacy;

(23) Pharmacy has the same meaning as in section 71-425;

(24) Drugs, medicines, and medicinal substances means (a) articles recognized in the official United States Pharmacopoeia, the Homeopathic Pharmacopoeia of the United States, the official National Formulary, or any supplement to any of them, (b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in humans or animals, (c) articles, except food, intended to affect the structure or any function of the body of a human or an animal, (d) articles intended for use as a component of any articles specified in subdivision (a), (b), or (c) of this subdivision, except any device or its components, parts, or accessories, and (e) prescription drugs or devices as defined in subdivision (31) of this section;

(25) Patient counseling means the verbal communication by a pharmacist, pharmacist intern, or practitioner, in a manner reflecting dignity and the right of the patient to a reasonable degree of privacy, of information to the patient or caregiver in order to improve therapeutic

outcomes by maximizing proper use of prescription drugs and devices and also includes the duties set out in section 71-1,147.35;

(26) Pharmacist in charge means a pharmacist who is designated on a pharmacy license or designated by a hospital as being responsible for the practice of pharmacy in the pharmacy for which a pharmacy license is issued and who works within the physical confines of such pharmacy for a majority of the hours per week that the pharmacy is open for business averaged over a twelve-month period or thirty hours per week, whichever is less;

(27) Pharmacist intern means a person who meets the requirements of section 71-1,144;

(28) Pharmacy technician means an individual registered under sections 71-1,147.65 to 71-1,147.72;

(29) Practitioner means a certified registered nurse anesthetist, a certified nurse midwife, a dentist, an optometrist, a nurse practitioner, a physician assistant, a physician, a podiatrist, or a veterinarian;

(30) Prescribe means to issue a medical order;

(31) Prescription drug or device or legend drug or device means (a) a drug or device which is required under federal law to be labeled with one of the following statements prior to being dispensed or delivered: (i) Caution: Federal law prohibits dispensing without prescription; (ii) Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian; or (iii) "Rx Only" or (b) a drug or device which is required by any applicable federal or state law to be dispensed pursuant only to a prescription or chart order or which is restricted to use by practitioners only;

(32) Prescription means an order for a drug or device issued by a practitioner for a specific patient, for emergency use, or for use in immunizations. Prescription does not include a chart order;

(33) Nonprescription drugs means nonnarcotic medicines or drugs which may be sold without a medical order and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the laws and regulations of this state and the federal government;

(34) Public health clinic worker means a person in a public health clinic with a delegated dispensing permit who has completed the approved training and has demonstrated proficiency to perform the task of dispensing authorized refills of oral contraceptives pursuant to a written prescription;

(35) Public health clinic means the department, any county, city-county, or multicounty health department, or any private not-for-profit family planning clinic licensed as a health clinic as defined in section 71-416;

(36) Signature means the name, word, or mark of a person written in his or her own hand with the intent to authenticate a writing or other form of communication or a digital signature which complies with section 86-611 or an electronic signature;

(37) Supervision means the immediate personal guidance and direction by the licensed pharmacist on duty in the facility of the performance by a pharmacy technician of authorized activities or functions subject to verification by such pharmacist, except that when a pharmacy

technician performs authorized activities or functions to assist a pharmacist on duty in the facility when the prescribed drugs or devices will be administered by a licensed staff member or consultant or by a licensed physician assistant to persons who are patients or residents of a facility, the activities or functions of such pharmacy technician shall only be subject to verification by a pharmacist on duty in the facility;

(38) Verification means the confirmation by a supervising pharmacist of the accuracy and completeness of the acts, tasks, or functions undertaken by a pharmacy technician to assist the pharmacist in the practice of pharmacy;

(39) Written control procedures and guidelines means the document prepared and signed by the pharmacist in charge and approved by the board which specifies the manner in which basic levels of competency of pharmacy technicians employed by the pharmacy are determined, the manner in which supervision is provided, the manner in which the functions of pharmacy technicians are verified, the maximum ratio of pharmacy technicians to one pharmacist used in the pharmacy, and guidelines governing the use of pharmacy technicians and the functions which they may perform;

(40) Medical gas distributor means a person who dispenses medical gases to a patient or ultimate user but does not include a person who manufactures medical gases or a person who distributes, transfers, delivers, dispenses, or sells medical gases to a person other than a patient or ultimate user;

(41) Facsimile means a copy generated by a system that encodes a document or photograph into electrical signals, transmits those signals over telecommunications lines, and reconstructs the signals to create an exact duplicate of the original document at the receiving end;

(42) Electronic signature has the same definition found in section 86-621; and

(43) Electronic transmission means transmission of information in electronic form. Electronic transmission may include computer-to-computer transmission or computer-to-facsimile transmission.

Source: Laws 1927, c. 167, § 120, p. 490; C.S.1929, § 71-1801; R.S.1943, § 71-1,142; Laws 1961, c. 339, § 1, p. 1062; Laws 1971, LB 350, § 1; Laws 1972, LB 1067, § 2; Laws 1983, LB 476, § 6; Laws 1988, LB 1100, § 44; Laws 1992, LB 1019, § 44; Laws 1993, LB 121, § 419; Laws 1993, LB 536, § 48; Laws 1994, LB 900, § 2; Laws 1994, LB 1210, § 61; Laws 1996, LB 1044, § 447; Laws 1996, LB 1108, § 14; Laws 1997, LB 307, § 124; Laws 1998, LB 1073, § 62; Laws 1999, LB 594, § 43; Laws 1999, LB 828, § 107; Laws 2000, LB 819, § 87; Laws 2001, LB 398, § 26; Laws 2002, LB 1105, § 480; Laws 2004, LB 1005, § 13; Laws 2005, LB 256, § 29; Laws 2005, LB 382, § 6; Laws 2007, LB236, § 29; Laws 2007, LB296, § 344; Laws 2007, LB463, § 1319.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 236 became effective September 1, 2007.

Cross Reference

Adulterated or misbranded drugs, regulations, see sections 71-2401 to 71-2405.
Advanced Practice Registered Nurse Licensure Act, see section 71-17,131.
Certified Registered Nurse Anesthetist Act, see section 71-1728.
Clinical Nurse Specialist Practice Act, see section 71-17,117.
Health insurer, choice of pharmacy, see section 44-783.
Liquor tax not applicable to medicinal preparations, see section 53-160.
Mail Service Pharmacy Licensure Act, see section 71-2406.
Mail-order pharmacies, insurance reimbursement, see section 44-513.02.
Nebraska Drug Product Selection Act, see section 71-5401.01.
Nurse Practitioner Act, see section 71-1704.
Pharmacy licensure, Health Care Facility Licensure Act, see section 71-401.
Poisons, sale of, see sections 71-2501 to 71-2512.
Prepaid Limited Health Service Organization Act, see section 44-4701.
Uniform Controlled Substances Act, see section 28-401.01.
Wholesale Drug Distributor Licensing Act, see section 71-7401.

71-1,143 Transferred to section 38-2850.

71-1,143.01 Pharmacist; license; requirements. (1) Every applicant for examination and licensure as a pharmacist shall be not less than twenty-one years of age, of good moral character and temperate habits, a graduate of an accredited pharmacy program, recognized by the board, except that an applicant who is a graduate of a pharmacy program located outside of the United States and which is not accredited shall be deemed to have satisfied the requirement of being a graduate of an accredited pharmacy program upon providing evidence satisfactory to the board of graduation from such foreign pharmacy program and upon successfully passing an equivalency examination approved by the board.

(2) Every applicant shall (a) file proof of sufficient internship experience in pharmacy, under the supervision of a licensed pharmacist, as may be required by the board, which shall comply with national requirements for internship as set forth by the National Association of Boards of Pharmacy, (b) have satisfactorily completed at least five years of college of which at least three years shall have been in an accredited pharmacy program, and (c) pass an examination satisfactory to the board.

(3) Proof of the qualifications for licensure prescribed in this section shall be made to the satisfaction of the board, substantiated by proper affidavits. In all cases the actual time of attendance in an accredited pharmacy program shall be certified by the appropriate school, college, or university authority by the issuance of the degree granted to a graduate of such school, college, or university. Service and experience in pharmacy under the supervision of a licensed pharmacist, as required in this section, shall be predominantly related to the practice of pharmacy and shall include the keeping of records and the making of reports required under state and federal statutes. The department, upon the recommendation of the board, shall adopt and promulgate rules and regulations as may be required to establish standards for internship which shall comply with national requirements to effect reciprocity with other states which have similar requirements for licensure. The required fee for pharmacy internship shall accompany the application.

Source: Laws 1927, c. 167, § 123, p. 491; C.S.1929, § 71-1804; Laws 1939, c. 91, § 1, p. 393; C.S.Supp.,1941, § 71-1804; Laws 1943, c. 151, § 2, p. 552; R.S.1943, § 71-1,145; Laws 1971, LB 350, § 3; Laws 1974, LB 811, § 14; Laws 1983, LB 476, § 14; Laws 1996, LB 1044, § 449; Laws 1999, LB 828, § 110; R.S.Supp.,2000, § 71-1,145; Laws 2001, LB 398, § 30; Laws 2003, LB 242, § 51; Laws 2003, LB 245, § 13; Laws 2004, LB 1005, § 15; Laws 2007, LB296, § 345; Laws 2007, LB463, § 947.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 947, and transferred to section 38-2851 operative on December 1, 2008.

71-1,143.02 Transferred to section 38-2853.

71-1,143.03 Transferred to section 38-2866.

71-1,144 Transferred to section 38-2854.

71-1,144.01 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,146 Transferred to section 38-2804.

71-1,146.01 Transferred to section 38-2870.

71-1,146.02 Transferred to section 38-2871.

71-1,147 Pharmacy; scope of practice; prohibited acts; violation; penalty. (1) Except as provided for pharmacy technicians in sections 71-1,147.65 to 71-1,147.72 and for individuals authorized to dispense under a delegated dispensing permit, no person other than a licensed pharmacist, a pharmacist intern, or a practitioner with a pharmacy license shall provide pharmaceutical care, compound and dispense drugs or devices, or dispense pursuant to a medical order. Notwithstanding any other provision of law to the contrary, a pharmacist or pharmacist intern may dispense drugs or devices pursuant to a medical order of a practitioner authorized to prescribe in another state if such practitioner could be authorized to prescribe such drugs or devices in this state.

(2) Except as provided for pharmacy technicians in sections 71-1,147.65 to 71-1,147.72 and for individuals authorized to dispense under a delegated dispensing permit, it shall be unlawful for any person to permit or direct a person who is not a pharmacist intern, a licensed pharmacist, or a practitioner with a pharmacy license to provide pharmaceutical care, compound and dispense drugs or devices, or dispense pursuant to a medical order.

(3) It shall be unlawful for any person to coerce or attempt to coerce a pharmacist to enter into a delegated dispensing agreement or to supervise any pharmacy technician for any purpose or in any manner contrary to the professional judgment of the pharmacist. Violation of this subsection by a health care professional regulated pursuant to the provisions of Chapter 71 shall be considered an act of unprofessional conduct. A violation of this subsection by a

facility shall be prima facie evidence in an action against the license of the facility pursuant to the Health Care Facility Licensure Act. Any pharmacist subjected to coercion or attempted coercion pursuant to this subsection has a cause of action against the person and may recover his or her damages and reasonable attorney's fees.

(4) Violation of this section by an unlicensed person shall be a Class III misdemeanor.

Source: Laws 1927, c. 167, § 127, p. 493; C.S.1929, § 71-1808; R.S.1943, § 71-1,147; Laws 1961, c. 339, § 3, p. 1063; Laws 1971, LB 350, § 5; Laws 1983, LB 476, § 15; Laws 1993, LB 536, § 50; Laws 1994, LB 900, § 4; Laws 1996, LB 1108, § 16; Laws 1999, LB 594, § 44; Laws 2001, LB 398, § 34; Laws 2007, LB236, § 30; Laws 2007, LB247, § 81; Laws 2007, LB463, § 963.
Effective date September 1, 2007.

Note: This section was also amended by Laws 2007, LB 247, section 81, and LB 463, section 963, and transferred to section 38-2867 operative on December 1, 2008.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

71-1,147.13 Transferred to section 38-28,103.

71-1,147.15 Transferred to section 38-28,102.

71-1,147.16 **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,147.17 **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,147.18 Transferred to section 38-2846.

71-1,147.19 Transferred to section 38-2824.

71-1,147.20 Transferred to section 38-2803.

71-1,147.21 Transferred to section 38-2805.

71-1,147.22 Transferred to section 38-2855.

71-1,147.23 Transferred to section 38-2856.

71-1,147.24 Transferred to section 38-2857.

71-1,147.25 Transferred to section 38-2858.

71-1,147.26 **Temporary educational permit; period valid; renewal.** The duration of any temporary educational permit issued pursuant to sections 71-1,147.17 to 71-1,147.32 shall be determined by the department but in no case shall it be in excess of one year. The permit may be renewed from time to time at the discretion of the department but in no case shall it be renewed for more than five one-year periods.

Source: Laws 1978, LB 675, § 10; Laws 1996, LB 1044, § 461; Laws 2007, LB296, § 346; Laws 2007, LB463, § 955.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 955, and transferred to section 38-2859 operative on December 1, 2008.

71-1,147.27 Transferred to section 38-2860.

71-1,147.28 Temporary educational permit; serve in approved program; application; contents. Before granting any temporary educational permit, the department shall ascertain by evidence satisfactory to the department that an accredited hospital or clinic or an accredited school or college of pharmacy in the State of Nebraska has requested the issuance of a temporary educational permit for an applicant to serve as a graduate student in its approved program for the period involved. Any application for the issuance of such permit shall be signed by the applicant requesting that such permit be issued to him or her and shall designate the specified approved graduate pharmacy educational program with respect to which such permit shall apply.

Source: Laws 1978, LB 675, § 12; Laws 1996, LB 1044, § 462; Laws 2007, LB296, § 347; Laws 2007, LB463, § 957.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 957, and transferred to section 38-2861 operative on December 1, 2008.

71-1,147.29 Transferred to section 38-2862.

71-1,147.30 Transferred to section 38-2863.

71-1,147.31 Temporary educational permit; disciplinary actions; appeal. Any temporary educational permit granted under the authority of sections 71-1,147.17 to 71-1,147.32 may be suspended, limited, or revoked by the department, upon recommendation of the board, at any time upon a finding that the reasons for issuing such permit no longer exist or that the person to whom such permit has been issued is no longer qualified to hold such permit or for any reason for which a pharmacist license could be suspended, limited, or revoked. A hearing on the suspension, limitation, or revocation of the temporary educational permit by the department shall be held in the same manner as for the denial of a pharmacist license. The final order of the director may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1978, LB 675, § 15; Laws 1988, LB 352, § 119; Laws 1996, LB 1044, § 464; Laws 1999, LB 828, § 124; Laws 2001, LB 398, § 41; Laws 2007, LB296, § 348; Laws 2007, LB463, § 960.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 960, and transferred to section 38-2864 operative on December 1, 2008.

Cross Reference

Administrative Procedure Act, see section 84-920.

71-1,147.32 Transferred to section 38-2865.

71-1,147.33 Repealed. Laws 2007, LB 236, § 47.

Note: This section was amended by Laws 2007, LB 296, section 349, and LB 463, section 986, and repealed by Laws 2007, LB 236, section 47, and LB 247, section 91. The repeal by LB 236 became effective September 1, 2007, and the section has been deleted.

71-1,147.34 Repealed. Laws 2007, LB 236, § 47.

Note: This section was amended by Laws 2007, LB 463, section 987, and repealed by Laws 2007, LB 236, section 47, and LB 247, section 91. The repeal by LB 236 became effective September 1, 2007, and the section has been deleted.

71-1,147.35 Prospective drug utilization review; counseling; requirements. (1)(a) Prior to the dispensing or the delivery of a drug or device pursuant to a medical order to a patient or caregiver, a pharmacist shall in all care settings conduct a prospective drug utilization review. Such prospective drug utilization review shall involve monitoring the patient-specific medical history described in subdivision (b) of this subsection and available to the pharmacist at the practice site for:

- (i) Therapeutic duplication;
- (ii) Drug-disease contraindications;
- (iii) Drug-drug interactions;
- (iv) Incorrect drug dosage or duration of drug treatment;
- (v) Drug-allergy interactions; and
- (vi) Clinical abuse or misuse.

(b) A pharmacist conducting a prospective drug utilization review shall ensure that a reasonable effort is made to obtain from the patient, his or her caregiver, or his or her practitioner and to record and maintain records of the following information to facilitate such review:

- (i) The name, address, telephone number, date of birth, and gender of the patient;
- (ii) The patient's history of significant disease, known allergies, and drug reactions and a comprehensive list of relevant drugs and devices used by the patient; and
- (iii) Any comments of the pharmacist relevant to the patient's drug therapy.

(c) The assessment of data on drug use in any prospective drug utilization review shall be based on predetermined standards, approved by the department upon the recommendation of the board.

(2)(a) Prior to the dispensing or delivery of a drug or device pursuant to a prescription, the pharmacist shall ensure that a verbal offer to counsel the patient or caregiver is made. The counseling of the patient or caregiver by the pharmacist shall be on elements which, in the exercise of the pharmacist's professional judgment, the pharmacist deems significant for the patient. Such elements may include, but need not be limited to, the following:

- (i) The name and description of the prescribed drug or device;
 - (ii) The route of administration, dosage form, dose, and duration of therapy;
 - (iii) Special directions and precautions for preparation, administration, and use by the patient or caregiver;
 - (iv) Common side effects, adverse effects or interactions, and therapeutic contraindications that may be encountered, including avoidance, and the action required if such effects, interactions, or contraindications occur;
 - (v) Techniques for self-monitoring drug therapy;
 - (vi) Proper storage;
 - (vii) Prescription refill information; and
 - (viii) Action to be taken in the event of a missed dose.
- (b) The patient counseling provided for in this subsection shall be provided in person whenever practical or by the utilization of telephone service which is available at no cost to the patient or caregiver.
- (c) Patient counseling shall be appropriate to the individual patient and shall be provided to the patient or caregiver.
- (d) Written information may be provided to the patient or caregiver to supplement the patient counseling provided for in this subsection but shall not be used as a substitute for such patient counseling.
- (e) This subsection shall not be construed to require a pharmacist to provide patient counseling when:
- (i) The patient or caregiver refuses patient counseling;
 - (ii) The pharmacist, in his or her professional judgment, determines that patient counseling may be detrimental to the patient's care or to the relationship between the patient and his or her practitioner;
 - (iii) The patient is a patient or resident of a health care facility or health care service licensed under the Health Care Facility Licensure Act to whom prescription drugs or devices are administered by a licensed or certified staff member or consultant or a certified physician's assistant; or
 - (iv) The practitioner authorized to prescribe drugs or devices specifies that there shall be no patient counseling unless he or she is contacted prior to such patient counseling. The prescribing practitioner shall specify such prohibition in an oral prescription or in writing on the face of a written prescription, including any prescription which is received by facsimile or electronic transmission. The pharmacist shall note "Contact Before Counseling" on the face of the prescription if such is communicated orally by the prescribing practitioner.

Source: Laws 1993, LB 536, § 55; Laws 1998, LB 1073, § 63; Laws 2000, LB 819, § 92; Laws 2001, LB 398, § 45; Laws 2005, LB 382, § 8; Laws 2007, LB247, § 26; Laws 2007, LB463, § 965.
Operative date June 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 965, and transferred to section 38-2869 operative on December 1, 2008.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

71-1,147.36 Transferred to section 38-2868.

71-1,147.42 Transferred to section 38-2875.

71-1,147.43 Transferred to section 38-2876.

71-1,147.44 Delegated dispensing permit; denial or disciplinary actions; notice; hearing; procedure. (1) If the department determines to deny an application for a delegated dispensing permit or to revoke, limit, suspend, or refuse renewal of a delegated dispensing permit, the department shall send to the applicant or permittee, by certified mail, a notice setting forth the particular reasons for the determination. The denial, limitation, suspension, revocation, or refusal of renewal shall become final thirty days after the mailing of the notice unless the applicant or permittee, within such thirty-day period, requests a hearing in writing. The applicant or permittee shall be given a fair hearing before the department and may present such evidence as may be proper. On the basis of such evidence, the determination involved shall be affirmed or set aside, and a copy of such decision setting forth the finding of facts and the particular reasons upon which it is based shall be sent by certified mail to the applicant or permittee. The decision shall become final thirty days after a copy of such decision is mailed unless the applicant or permittee within such thirty-day period appeals the decision pursuant to section 71-1,147.46.

(2) The procedure governing hearings authorized by this section shall be in accordance with rules and regulations adopted and promulgated by the department. A full and complete record shall be kept of all proceedings. Witnesses may be subpoenaed by either party and shall be allowed a fee at a rate prescribed by the rules and regulations adopted and promulgated by the department. The proceedings shall be summary in nature and triable as equity actions. Affidavits may be received in evidence in the discretion of the director. The department shall have the power to administer oaths, to subpoena witnesses and compel their attendance, and to issue subpoenas duces tecum and require the production of books, accounts, and documents in the same manner and to the same extent as the district courts of the state. Depositions may be used by either party.

Source: Laws 1994, LB 900, § 14; Laws 1996, LB 1044, § 466; Laws 1998, LB 1073, § 69; Laws 2001, LB 398, § 52; Laws 2007, LB296, § 350; Laws 2007, LB463, § 973.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 973, and transferred to section 38-2877 operative on December 1, 2008.

71-1,147.45 Delegated dispensing permit; orders authorized; civil penalty. (1) Upon the completion of any hearing pursuant to section 71-1,147.44, the director shall have the authority through entry of an order to exercise in his or her discretion any or all of the following powers:

- (a) Issue a censure against the permittee;
 - (b) Place the permittee on probation;
 - (c) Place a limitation or limitations on the permit and upon the right of the permittee to dispense drugs or devices to the extent, scope, or type of operation, for such time, and under such conditions as the director finds necessary and proper. The director shall consult with the board in all instances prior to issuing an order of limitation;
 - (d) Impose a civil penalty not to exceed twenty thousand dollars. The amount of the civil penalty, if any, shall be based on the severity of the violation. If any violation is a repeated or continuing violation, each violation or each day a violation continues shall constitute a separate violation for the purpose of computing the applicable civil penalty, if any;
 - (e) Enter an order of suspension of the permit;
 - (f) Enter an order of revocation of the permit; and
 - (g) Dismiss the action.
- (2) The permittee shall not dispense drugs or devices after a permit is revoked or during the time for which the permit is suspended. If a permit is suspended, the suspension shall be for a definite period of time to be fixed by the director. The permit shall be automatically reinstated upon the expiration of such period if the current renewal fees have been paid. If the permit is revoked, the revocation shall be permanent, except that at any time after the expiration of two years, application may be made for reinstatement by any permittee whose permit has been revoked. The application shall be addressed to the director but may not be received or filed unless accompanied by a written recommendation of reinstatement by the board. The department may adopt and promulgate the necessary rules and regulations concerning notice and hearing of such application.
- (3) Any civil penalty assessed and unpaid under this section shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. The department shall remit any collected civil penalty to the State Treasurer, within thirty days after receipt, for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1994, LB 900, § 15; Laws 1998, LB 1073, § 70; Laws 1999, LB 828, § 126; Laws 2001, LB 398, § 53; Laws 2007, LB296, § 351; Laws 2007, LB463, § 974.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 974, and transferred to section 38-2878 operative on December 1, 2008.

71-1,147.46 Transferred to section 38-2879.

71-1,147.47 Transferred to section 38-2880.

71-1,147.48 Delegated dispensing permit; formularies. (1) Upon recommendation of the board, the director shall approve a formulary to be used by individuals dispensing

pursuant to a delegated dispensing permit. A formulary shall consist of a list of drugs or devices appropriate to delegated dispensing activities authorized by the delegated dispensing permit. Except as otherwise provided in this section, if the board finds that a formulary would be unnecessary to protect the public health and welfare and promote public convenience and necessity, the board shall recommend that no formulary be approved.

(2)(a) Upon the recommendation of the board, which shall be based on the recommendations of the Public Health Clinic Formulary Advisory Committee, the director shall approve the formulary to be used by public health clinics dispensing pursuant to a delegated dispensing permit.

(b) The formulary for a public health clinic shall consist of a list of drugs and devices for contraception, sexually transmitted diseases, and vaginal infections which may be dispensed and stored, patient instruction requirements which shall include directions on the use of drugs and devices, potential side effects and drug interactions, criteria for contacting the on-call pharmacist, and accompanying written patient information.

(c) In no event shall the director approve for inclusion in the formulary any drug or device not approved by the committee or exclude any of the provisions for patient instruction approved by the board.

(d) Drugs and devices with the following characteristics shall not be eligible to be included in the formulary:

- (i) Controlled substances;
- (ii) Drugs with significant dietary interactions;
- (iii) Drugs with significant drug-drug interactions; and
- (iv) Drugs or devices with complex counseling profiles.

(3)(a) Upon the recommendation of the board, the director shall approve a formulary to be used by dialysis drug or device distributors.

(b) The formulary for a dialysis drug or device distributor shall consist of a list of drugs, solutions, supplies, and devices for the treatment of chronic kidney failure which may be dispensed and stored.

(c) In no event shall the director approve for inclusion in the formulary any drug or device not approved by the board.

(d) Controlled substances shall not be eligible to be included in the formulary.

Source: Laws 1994, LB 900, § 18; Laws 1996, LB 1044, § 467; Laws 1998, LB 1073, § 72; Laws 2001, LB 398, § 56; Laws 2007, LB296, § 352; Laws 2007, LB463, § 977.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 977, and transferred to section 38-2881 operative on December 1, 2008.

71-1,147.50 Transferred to section 38-2882.

71-1,147.52 Transferred to section 38-2883.

71-1,147.53 Delegated dispensing permit; public health clinic; dispensing requirements. Under a delegated dispensing permit for a public health clinic, approved formulary drugs and devices may be dispensed by a public health clinic worker or a health care professional licensed in Nebraska to practice medicine and surgery or licensed in Nebraska as a registered nurse, licensed practical nurse, or physician assistant without the onsite services of a pharmacist if:

(1) The initial dispensing of all prescriptions for approved formulary drugs and devices is conducted by a health care professional licensed in Nebraska to practice medicine and surgery or pharmacy or licensed in Nebraska as a registered nurse, licensed practical nurse, or physician assistant;

(2) The drug or device is dispensed pursuant to a prescription written on site by a practitioner;

(3) The only prescriptions to be refilled under the delegated dispensing permit are prescriptions for oral contraceptives;

(4) Prescriptions are accompanied by patient instructions and written information approved by the director;

(5) The dispensing of authorized refills of oral contraceptives is done by a licensed health care professional listed in subdivision (1) of this section or by a public health clinic worker;

(6) All drugs or devices are prepackaged by the manufacturer or at a public health clinic by a pharmacist into the quantity to be prescribed and dispensed at the public health clinic;

(7) All drugs and devices stored, received, or dispensed under the authority of public health clinics are properly labeled at all times. For purposes of this subdivision, properly labeled means that the label affixed to the container prior to dispensing contains the following information:

(a) The name of the manufacturer;

(b) The lot number and expiration date from the manufacturer or, if prepackaged by a pharmacist, the lot number and calculated expiration date. Calculated expiration date means the expiration date on the manufacturer's container or one year from the date the drug is repackaged, whichever is earlier;

(c) Directions for patient use;

(d) The quantity of drug in the container;

(e) The name, strength, and dosage form of the drug; and

(f) Auxiliary labels as needed for proper adherence to any prescription;

(8) The following additional information is added to the label of each container when the drug or device is dispensed:

(a) The patient's name;

(b) The name of the prescribing health care professional;

(c) The prescription number;

(d) The date dispensed; and

(e) The name and address of the public health clinic;

(9) The only drugs and devices allowed to be dispensed or stored by public health clinics appear on the formulary approved pursuant to section 71-1,147.48; and

(10) At any time that dispensing is occurring from a public health clinic, the delegating pharmacist for the public health clinic or on-call pharmacist in Nebraska is available, either in person or by telephone, to answer questions from clients, staff, public health clinic workers, or volunteers. This availability shall be confirmed and documented at the beginning of each day that dispensing will occur. The delegating pharmacist or on-call pharmacist shall inform the public health clinic if he or she will not be available during the time that his or her availability is required. If a pharmacist is unavailable, no dispensing shall occur.

Source: Laws 1994, LB 900, § 23; Laws 1996, LB 1044, § 468; Laws 1996, LB 1108, § 18; Laws 1998, LB 1073, § 76; Laws 2001, LB 398, § 59; Laws 2002, LB 1062, § 34; Laws 2007, LB296, § 353; Laws 2007, LB463, § 980.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 980, and transferred to section 38-2884 operative on December 1, 2008.

71-1,147.54 Transferred to section 38-2885.

71-1,147.55 Transferred to section 38-2886.

71-1,147.56 Transferred to section 38-2887.

71-1,147.57 Transferred to section 38-2888

71-1,147.59 Delegated dispensing permit; advisory committees; authorized; Public Health Clinic Formulary Advisory Committee; created; members; terms; removal. (1) The board may appoint formulary advisory committees as deemed necessary for the determination of formularies for delegated dispensing permittees.

(2) The Public Health Clinic Formulary Advisory Committee is created. The committee shall consist of eight members as follows:

(a) Two members designated by the board;

(b) Two members who are employees of the department with knowledge of and interest in reproductive health and sexually transmitted diseases;

(c) Two members who are licensed pharmacists in this state and who are selected by the director. The Nebraska Pharmacists Association may submit to the director a list of five persons of recognized ability in the profession. If such a list is submitted, the director shall consider the names on such list and may appoint one or more of the persons so named. The director may appoint any qualified person even if such person is not named on the list submitted by the association; and

(d) Two members who are employees of public health clinics which hold or will hold a delegated dispensing permit and who are selected by the director from names recommended by such public health clinics.

(3) Designations and recommendations shall be made and submitted to the director in July prior to the third quarter meeting of the committee. Members shall serve for terms of two years each beginning with the third quarter meeting. Members may serve for consecutive terms as approved by the director. The director may remove a member of the committee for inefficiency, neglect of duty, or misconduct in office.

Source: Laws 1994, LB 900, § 29; Laws 1996, LB 1044, § 469; Laws 1998, LB 1073, § 82; Laws 2001, LB 398, § 63; Laws 2007, LB296, § 354; Laws 2007, LB463, § 985.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 985, and transferred to section 38-2889 operative on December 1, 2008.

71-1,147.62 Transferred to section 38-2872.

71-1,147.63 Transferred to section 38-2873.

71-1,147.64 Transferred to section 38-2874.

71-1,147.65 Pharmacy technicians; registration; requirements. (1) All pharmacy technicians employed by a facility licensed under the Health Care Facility Licensure Act shall be registered with the Pharmacy Technician Registry created in section 71-1,147.68.

(2) To register as a pharmacy technician, an individual shall (a) be at least eighteen years of age, (b) be a high school graduate or be officially recognized by the State Department of Education as possessing the equivalent degree of education, (c) have never been convicted of any nonalcohol, drug-related misdemeanor or felony, (d) file an application with the department, and (e) pay the applicable fee.

(3) A pharmacy technician shall apply for registration as provided in this section within thirty days after being hired by a pharmacy or facility. Pharmacy technicians employed in that capacity on September 1, 2007, shall apply for registration within thirty days after September 1, 2007.

Source: Laws 2007, LB236, § 31.
Effective date September 1, 2007.

Note: Because of the enactment of Laws 2007, LB 463, and the recodification of credentialing of health occupations and professions which resulted in the transfer of sections to Chapter 38, this section was transferred to section 38-2890 operative on December 1, 2008.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

71-1,147.66 Pharmacy technicians; authorized tasks. (1) A pharmacy technician shall only perform tasks which do not require professional judgment and which are subject to verification to assist a pharmacist in the practice of pharmacy.

(2) The functions and tasks which shall not be performed by pharmacy technicians include, but are not limited to:

- (a) Receiving oral medical orders from a practitioner or his or her agent;
- (b) Providing patient counseling;
- (c) Performing any evaluation or necessary clarification of a medical order or performing any functions other than strictly clerical functions involving a medical order;
- (d) Supervising or verifying the tasks and functions of pharmacy technicians;
- (e) Interpreting or evaluating the data contained in a patient's record maintained pursuant to section 71-1,147.35;
- (f) Releasing any confidential information maintained by the pharmacy;
- (g) Performing any professional consultations; and
- (h) Drug product selection, with regard to an individual medical order, in accordance with the Nebraska Drug Product Selection Act.

(3) The director shall, with the recommendation of the board, waive any of the limitations in subsection (2) of this section for purposes of a scientific study of the role of pharmacy technicians approved by the board. Such study shall be based upon providing improved patient care or enhanced pharmaceutical care. Any such waiver shall state the length of the study and shall require that all study data and results be made available to the board upon the completion of the study. Nothing in this subsection requires the board to approve any study proposed under this subsection.

Source: Laws 2007, LB236, § 32; Laws 2007, LB247, § 82.
Effective date September 1, 2007.

Note: This section was also amended by Laws 2007, LB 247, section 82, and transferred to section 38-2891 operative on December 1, 2008.

Cross Reference

Nebraska Drug Product Selection Act, see section 71-5401.01.

71-1,147.67 Pharmacy technicians; employer responsibility. (1) A pharmacy employing pharmacy technicians shall be responsible for the supervision and performance of the pharmacy technicians.

(2) The pharmacist in charge shall be responsible for the practice of pharmacy and the establishment of written control procedures and guidelines governing the qualifications, onsite training, functions, supervision, and verification of the performance of pharmacy technicians. The supervision of such technicians at the place of employment shall be performed by the licensed pharmacist who is on duty in the facility with the pharmacy technicians.

(3)(a) Each pharmacy shall document, in a manner and method specified in the written control procedures and guidelines, the basic competence of the pharmacy technician prior to performance of tasks and functions by such technician. Such basic competence shall include, but not be limited to:

- (i) Basic pharmaceutical nomenclature;

(ii) Metric system measures, both liquid and solid;
 (iii) The meaning and use of Roman numerals;
 (iv) Abbreviations used for dosages and directions to patients;
 (v) Basic medical terms, including terms relating to ailments, diseases, or infirmities;
 (vi) The use and operation of automated dispensing and record-keeping systems if used by the employing pharmacy;

(vii) Applicable statutes, rules, and regulations governing the preparation, compounding, dispensing, and distribution of drugs or devices, record keeping with regard to such functions, and the employment, use, and functions of pharmacy technicians; and

(viii) The contents of the written control procedures and guidelines.

(b) Written control procedures and guidelines shall specify the functions that pharmacy technicians may perform in the employing pharmacy. The written control procedures and guidelines shall specify the means used by the employing pharmacy to verify that the prescribed drug or device, the dosage form, and the directions provided to the patient or caregiver conform to the medical order authorizing the drug or device to be dispensed.

(c) The written control procedures and guidelines shall specify the manner in which the verification made prior to dispensing is documented.

(4) Each pharmacy or facility shall, before using pharmacy technicians, file with the board a copy of its written control procedures and guidelines and receive approval of its written control procedures and guidelines from the board. The board shall, within ninety days after the filing of such written control procedures and guidelines, review and either approve or disapprove them. The board shall notify the pharmacy or facility of the approval or disapproval. The board or its representatives shall have access to the approved written control procedures and guidelines upon request. Any written control procedures and guidelines for supportive pharmacy personnel that were filed by a pharmacy and approved by the board prior to September 1, 2007, shall be deemed to be approved and to apply to pharmacy technicians.

Source: Laws 2007, LB236, § 33.
 Effective date September 1, 2007.

Note: Because of the enactment of Laws 2007, LB 463, and the recodification of credentialing of health occupations and professions which resulted in the transfer of sections to Chapter 38, this section was transferred to section 38-2892 operative on December 1, 2008.

71-1,147.68 Pharmacy Technician Registry; created; contents. (1) The Pharmacy Technician Registry is created. The department shall list each pharmacy technician registration in the registry. A listing in the registry shall be valid for the term of the registration and upon renewal unless such listing is refused renewal or is removed as provided in section 71-1,147.69.

(2) The registry shall contain the following information on each individual who meets the conditions set out in section 71-1,147.65: (a) The individual's full name; (b) information necessary to identify the individual; (c) any conviction of a nonalcohol, drug-related felony

or misdemeanor reported to the department; and (d) any other information as the department may require by rule and regulation.

Source: Laws 2007, LB236, § 34.
Effective date September 1, 2007.

Note: Because of the enactment of Laws 2007, LB 463, and the recodification of credentialing of health occupations and professions which resulted in the transfer of sections to Chapter 38, this section was transferred to section 38-2893 operative on December 1, 2008.

71-1,147.69 Pharmacy technician; registration; disciplinary measures; procedure; Licensee Assistance Program; participation. (1) A registration to practice as a pharmacy technician may be denied, refused renewal, removed, or suspended or have other disciplinary measures taken against it by the department, with the recommendation of the board, for failure to meet the requirements of or for violation of sections 71-1,147.65 to 71-1,147.72 or the rules and regulations adopted under such sections.

(2) If the department proposes to deny, refuse renewal of, or remove or suspend a registration, it shall send the applicant or registrant a notice setting forth the action to be taken and the reasons for the determination. The denial, refusal to renew, removal, or suspension shall become final thirty days after mailing the notice unless the applicant or registrant gives written notice to the department of his or her desire for an informal conference or for a formal hearing.

(3) Notice may be served by any method specified in section 25-505.01, or the department may permit substitute or constructive service as provided in section 25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in section 25-505.01.

(4) Pharmacy technicians may participate in the Licensee Assistance Program described in section 71-172.01.

Source: Laws 2007, LB236, § 35; Laws 2007, LB247, § 83.
Effective date September 1, 2007.

Note: This section was also amended by Laws 2007, LB 247, section 83, and transferred to section 38-2894 operative on December 1, 2008.

71-1,147.70 Pharmacy technician; discipline against supervising pharmacist; enforcement orders. (1) If a pharmacy technician performs functions requiring professional judgment and licensure as a pharmacist, performs functions not specified under approved written control procedures and guidelines, or performs functions without supervision and such acts are known to the pharmacist supervising the pharmacy technician or the pharmacist in charge or are of such a nature that they should have been known to a reasonable person, such acts may be considered acts of unprofessional conduct on the part of the pharmacist supervising the pharmacy technician or the pharmacist in charge pursuant to section 71-147, and disciplinary measures may be taken against such pharmacist supervising the pharmacy technician or the pharmacist in charge pursuant to the Uniform Licensing Law.

(2) Acts described in subsection (1) of this section may be grounds for the department, with the recommendation of the board, to apply to the district court in the judicial district in which the pharmacy is located for an order to cease and desist from the performance of any unauthorized acts. On or at any time after such application the court may, in its discretion, issue an order restraining such pharmacy or its agents or employees from the performance of unauthorized acts. After a hearing the court shall either grant or deny the application. Such order shall continue until the court, after a hearing, finds the basis for such order has been removed.

Source: Laws 2007, LB236, § 36; Laws 2007, LB247, § 84.
Effective date September 1, 2007.

Note: This section was also amended by Laws 2007, LB 247, section 84, and transferred to section 38-2895 operative on December 1, 2008.

71-1,147.71 Pharmacy technician; reapplication for registration; lifting of disciplinary sanction. A person whose registration has been denied, refused renewal, removed, or suspended from the Pharmacy Technician Registry may reapply for registration or for lifting of the disciplinary sanction at any time in accordance with the rules and regulations adopted and promulgated by the department.

Source: Laws 2007, LB236, § 37.
Effective date September 1, 2007.

Note: Because of the enactment of Laws 2007, LB 463, and the recodification of credentialing of health occupations and professions which resulted in the transfer of sections to Chapter 38, this section was transferred to section 38-2896 operative on December 1, 2008.

71-1,147.72 Pharmacy technician; duty to report impaired practitioner; immunity. A pharmacy technician shall report first-hand knowledge of facts giving him or her reason to believe that any person in his or her profession, or any person in another profession under the regulatory provisions of the department, may be practicing while his or her ability to practice is impaired by alcohol, controlled substances, or narcotic drugs. A report made to the department under this section shall be confidential. Any person making a report to the department under this section, except for those self-reporting, shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. The immunity granted by this section shall not apply to any person causing damage or injury by his or her willful, wanton, or grossly negligent act of commission or omission.

Source: Laws 2007, LB236, § 38.
Effective date September 1, 2007.

Note: Because of the enactment of Laws 2007, LB 463, and the recodification of credentialing of health occupations and professions which resulted in the transfer of sections to Chapter 38, this section was transferred to section 38-2897 operative on December 1, 2008.

71-1,148 Transferred to section 38-2899.

71-1,149 Transferred to section 38-28,100.

71-1,151 **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

(t) PRACTICE OF VETERINARY MEDICINE AND SURGERY

71-1,152.01 Transferred to section 38-3320.

71-1,153 Transferred to section 38-3301.

71-1,154 **Terms, defined.** When used in the Nebraska Veterinary Practice Act and elsewhere in the Uniform Licensing Law, unless the context otherwise requires:

(1) Animal means any animal other than man and includes birds, fish, and reptiles, wild or domestic, living or dead, except domestic poultry;

(2) Veterinary medicine and surgery includes veterinary surgery, obstetrics, dentistry, and all other branches or specialties of veterinary medicine;

(3) Practice of veterinary medicine and surgery means:

(a) To diagnose, treat, correct, change, relieve, or prevent animal disease, deformity, defect, injury, or other physical or mental conditions, including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique, and the use of any manual or mechanical procedure for testing for pregnancy or for correcting sterility or infertility. The acts described in this subdivision shall not be done without a valid veterinarian-client-patient relationship;

(b) To render advice or recommendation with regard to any act described in subdivision (a) of this subdivision;

(c) To represent, directly or indirectly, publicly or privately, an ability and willingness to do any act described in subdivision (a) of this subdivision; and

(d) To use any title, words, abbreviation, or letters in a manner or under circumstances which induce the belief that the person using them is qualified to do any act described in subdivision (a) of this subdivision;

(4) Veterinarian means a person who has received the degree of Doctor of Veterinary Medicine or its equivalent from an accredited school of veterinary medicine;

(5) Licensed veterinarian means a person who is validly and currently licensed to practice veterinary medicine and surgery in this state;

(6) Veterinarian-client-patient relationship means that:

(a) The veterinarian has assumed the responsibility for making clinical judgments regarding the health of the animal and the need for medical treatment, and the client has agreed to follow the veterinarian's instructions;

(b) The veterinarian has sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal. This means that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal by

virtue of an examination of the animal or by medically appropriate and timely visits to the premises where the animal is kept; and

(c) The veterinarian is readily available or has arranged for emergency coverage and for followup evaluation in the event of adverse reactions or the failure of the treatment regimen;

(7) Accredited school of veterinary medicine within the meaning of the Nebraska Veterinary Practice Act means:

(a) One approved by the department upon the recommendation of the board;

(b) A veterinary college or division of a university or college that offers the degree of Doctor of Veterinary Medicine or its equivalent; and

(c) One that conforms to the standards required for accreditation by the American Veterinary Medical Association;

(8) Person means any individual, firm, partnership, limited liability company, association, joint venture, cooperative and corporation, or any other group or combination acting in concert; and whether or not acting as a principal, trustee, fiduciary, receiver, or as any other kind of legal or personal representative, or as the successor in interest, assignee, agent, factor, servant, employee, director, officer, or any other representative of such person;

(9) Board means the Board of Veterinary Medicine and Surgery;

(10) Department means the Division of Public Health of the Department of Health and Human Services;

(11) Veterinary technician means an individual who has met one of the requirements of subsection (1) of section 71-1,165;

(12) Licensed veterinary technician means a veterinary technician who is validly and currently licensed as a veterinary technician in this state. Only a licensed veterinary technician may advertise or offer his or her services in a manner calculated to lead others to believe that he or she is a veterinary technician;

(13) Unlicensed assistant means an individual who is not a veterinarian or a veterinary technician who is working in veterinary medicine;

(14) Supervisor means a licensed veterinarian or licensed veterinary technician as required by statute or rule or regulation for the particular delegated task being performed by a veterinary technician or unlicensed assistant;

(15) Immediate supervision means that the supervisor is on the premises and is in direct eyesight and hearing range of the animal and the veterinary technician or unlicensed assistant who is treating the animal and the animal has been examined by a veterinarian at such times as acceptable veterinary practice requires consistent with the particular delegated animal health care task;

(16) Direct supervision means that the supervisor is on the premises and is available to the veterinary technician or unlicensed assistant who is treating the animal and the animal has been examined by a veterinarian at such times as acceptable veterinary practice requires consistent with the particular delegated animal health care task; and

(17) Indirect supervision means that the supervisor is not on the premises but is easily accessible and has given written or oral instructions for treatment of the animal and the animal has been examined by a veterinarian at such times as acceptable veterinary practice requires consistent with the particular delegated animal health care task.

Source: Laws 1967, c. 439, § 2, p. 1353; Laws 1988, LB 1100, § 55; Laws 1993, LB 121, § 420; Laws 1996, LB 1044, § 470; Laws 1997, LB 307, § 127; Laws 1999, LB 828, § 128; Laws 2000, LB 833, § 4; Laws 2007, LB296, § 355; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

71-1,155 Transferred to section 38-3321.

71-1,157 Transferred to section 38-3323.

71-1,158 Transferred to section 38-3322.

71-1,160 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,162 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,163 Transferred to section 38-3324.

71-1,164 Transferred to section 38-3330.

71-1,165 Transferred to section 38-3325.

71-1,166 Transferred to section 38-3326.

(u) PRACTICE OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

71-1,186 Terms, defined. For purposes of sections 71-1,186 to 71-1,196 and elsewhere in the Uniform Licensing Law, unless the context otherwise requires:

- (1) Board means the Board of Audiology and Speech-Language Pathology;
- (2) Practice of audiology means the application of evidence-based practice in clinical decisionmaking for the prevention, assessment, habilitation, rehabilitation, and maintenance of persons with hearing, auditory function, and vestibular function impairments and related impairments, including (a) cerumen removal from the cartilaginous outer one-third portion of the external auditory canal when the presence of cerumen may affect the accuracy of hearing evaluations or impressions of the ear canal for amplification devices and (b) evaluation, selection, fitting, and dispensing of hearing aids, external processors of implantable hearing aids, and assistive technology devices as part of a comprehensive audiological rehabilitation program. Practice of audiology does not include the practice of medical diagnosis, medical treatment, or surgery;

(3) Audiologist means an individual who practices audiology and who presents himself or herself to the public by any title or description of services incorporating the words audiologist, hearing clinician, hearing therapist, or any similar title or description of services;

(4) Practice of speech-language pathology means the application of principles and methods associated with the development and disorders of human communication skills and with dysphagia, which principles and methods include screening, assessment, evaluation, treatment, prevention, consultation, and restorative modalities for speech, voice, language, language-based learning, hearing, swallowing, or other upper aerodigestive functions for the purpose of improving quality of life by reducing impairments of body functions and structures, activity limitations, participation restrictions, and environmental barriers. Practice of speech-language pathology does not include the practice of medical diagnosis, medical treatment, or surgery;

(5) Speech-language pathologist means an individual who presents himself or herself to the public by any title or description of services incorporating the words speech-language pathologist, speech therapist, speech correctionist, speech clinician, language pathologist, language therapist, language clinician, logopedist, communicologist, aphasiologist, aphasia therapist, voice pathologist, voice therapist, voice clinician, phoniatriest, or any similar title, term, or description of services;

(6) Audiology or speech-language pathology assistant or any individual who presents himself or herself to the public by any title or description with the same duties means any person who, following specified training and receiving specified supervision, provides specified limited structured communication or swallowing services, which are developed and supervised by a licensed audiologist or licensed speech-language pathologist, in the areas in which the supervisor holds licenses; and

(7) Dysphagia means disorders of swallowing.

Source: Laws 1978, LB 406, § 13; Laws 1985, LB 129, § 14; Laws 1988, LB 1100, § 66; Laws 1999, LB 828, § 130; Laws 2007, LB247, § 27; Laws 2007, LB247, § 64; Laws 2007, LB463, § 188.
Operative date June 1, 2007.

Note: This section was also amended by Laws 2007, LB 247, section 64, and LB 463, section 188, and transferred to section 38-502 operative on December 1, 2008.

71-1,186.01 Repealed. Laws 2007, LB 247, § 92.

Note: This section was repealed by Laws 2007, LB 247, section 92, and LB 463, section 1319. The repeal by LB 247 became operative on June 1, 2007.

71-1,187 Practice of audiology or speech-language pathology; law, how construed. Nothing in the Uniform Licensing Law shall be construed to prevent or restrict:

(1) The practice of audiology or speech-language pathology or the use of the official title of such practice by a person employed as a speech-language pathologist or audiologist by the federal government;

(2) A physician from engaging in the practice of medicine and surgery or any individual from carrying out any properly delegated responsibilities within the normal practice of medicine and surgery under the supervision of a physician;

(3) A person licensed as a hearing aid fitter and dealer in this state from engaging in the fitting, selling, and servicing of hearing aids or performing such other duties as defined in sections 71-4701 to 71-4719;

(4) The practice of audiology or speech-language pathology or the use of the official title of such practice by a person who holds a valid and current credential as a speech-language pathologist or audiologist issued by the State Department of Education, if such person performs speech-language pathology or audiology services solely as a part of his or her duties within an agency, institution, or organization for which no fee is paid directly or indirectly by the recipient of such service and under the jurisdiction of the State Department of Education, but such person may elect to be within the jurisdiction of sections 71-1,186 to 71-1,196;

(5) The clinical practice in audiology or speech-language pathology required for students enrolled in an accredited college or university pursuing a major in audiology or speech-language pathology, if such clinical practices are supervised by a person licensed to practice audiology or speech-language pathology and if the student is designated by a title such as student clinician or other title clearly indicating the training status; or

(6) The utilization of a speech aide or other personnel employed by a public school, educational service unit, or other private or public educational institution working under the direct supervision of a credentialed speech-language pathologist.

Source: Laws 1978, LB 406, § 14; Laws 1985, LB 129, § 15; Laws 1990, LB 828, § 1; Laws 2001, LB 209, § 11; Laws 2007, LB247, § 28; Laws 2007, LB463, § 196.
Operative date June 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 196, and transferred to section 38-511 operative on December 1, 2008.

71-1,188 Transferred to section 38-513.

71-1,189 Transferred to section 38-514.

71-1,190 Practice of audiology or speech-language pathology; license; applicant; requirements. (1) Every applicant for a license to practice audiology shall (a)(i) for applicants graduating prior to September 1, 2007, present proof of a master's degree, a doctoral degree, or the equivalent of a master's degree or doctoral degree in audiology from an academic program approved by the board, and (ii) for applicants graduating on or after September 1, 2007, present proof of a doctoral degree or its equivalent in audiology, (b) present proof of no less than thirty-six weeks of full-time professional experience or equivalent half-time professional experience in audiology, supervised in the area in which licensure is sought, and (c) successfully complete an examination approved by the board.

(2) Every applicant for a license to practice speech-language pathology shall (a) present proof of a master's degree, a doctoral degree, or the equivalent of a master's degree or doctoral

degree in speech-language pathology from an academic program approved by the board, (b) present proof of no less than thirty-six weeks of full-time professional experience or equivalent half-time professional experience in speech-language pathology, supervised in the area in which licensure is sought, and (c) successfully complete an examination approved by the board.

(3) Presentation of official documentation of certification by a nationwide professional accrediting organization approved by the board shall be deemed equivalent to the requirements of this section.

Source: Laws 1978, LB 406, § 17; Laws 1985, LB 129, § 18; Laws 1988, LB 1100, § 67; Laws 2007, LB200, § 200; Laws 2007, LB463, § 1178.
Operative date September 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 200, and transferred to section 38-515 operative on December 1, 2008.

71-1,190.01 Repealed. Laws 2007, LB 247, § 92.

Note: This section was amended by Laws 2007, LB 296, section 356, and repealed by Laws 2007, LB 247, section 92, and LB 463, section 1319. The repeal by LB 247 became operative on June 1, 2007, and the section has been deleted.

71-1,191 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,192 Repealed. Laws 2007, LB 247, § 92.

Note: This section was repealed by Laws 2007, LB 247, section 92, and LB 463, section 1319. The repeal by LB 247 became operative on June 1, 2007.

71-1,193 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,194 Transferred to section 38-518.

71-1,195.01 Audiology or speech-language pathology assistant; registration; requirements. (1) Upon application and payment of the registration fee, the department shall register to practice as an audiology or speech-language pathology assistant any person who:

(a)(i) Holds a bachelor's degree or its equivalent in communication disorders, (ii) holds an associate degree or its equivalent in communication disorders from an accredited training program, or (iii) between the period of June 1, 2005, and June 1, 2007, was registered as and practiced as a communication assistant for at least thirty hours per week for a minimum of nine months per year;

(b) Has successfully completed all required training pursuant to sections 71-1,195.04 and 71-1,195.05 and any inservice training required pursuant to section 71-1,195.09; and

(c) Has demonstrated ability to reliably maintain records and provide treatment under the supervision of a licensed audiologist or speech-language pathologist.

(2) Such registration shall be valid for one year from the date of issuance.

(3) The board shall, with the approval of the department, adopt and promulgate rules and regulations necessary to administer sections 71-1,195.01 to 71-1,195.09.

Source: Laws 1985, LB 129, § 23; Laws 1988, LB 1100, § 69; Laws 2002, LB 1021, § 27; Laws 2003, LB 242, § 60; Laws 2007, LB247, § 29; Laws 2007, LB463, § 204.
Operative date June 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 204, and transferred to section 38-519 operative on December 1, 2008.

71-1,195.02 Audiology or speech-language pathology assistant; supervision; termination. (1) The department, upon recommendation of the board, shall approve an application submitted by an audiologist or speech-language pathologist for supervision of an audiology or speech-language pathology assistant when:

(a) The audiology or speech-language pathology assistant meets the requirements for registration pursuant to section 71-1,195.01;

(b) The audiologist or speech-language pathologist has a valid Nebraska license; and

(c) The audiologist or speech-language pathologist practices in Nebraska.

(2) Any audiologist or speech-language pathologist seeking approval for supervision of an audiology or speech-language pathology assistant shall submit an application which is signed by the audiology or speech-language pathology assistant and the audiologist or speech-language pathologist with whom he or she is associated. Such application shall (a) identify the settings within which the audiology or speech-language pathology assistant is authorized to practice, (b) describe the agreed-upon functions that the audiology or speech-language pathology assistant may perform as provided in section 71-1,195.06, and (c) describe the provision for supervision by an alternate audiologist or speech-language pathologist when necessary.

(3) If the supervision of an audiology or speech-language pathology assistant is terminated by the audiologist, speech-language pathologist, or audiology or speech-language pathology assistant, the audiologist or speech-language pathologist shall notify the department of such termination. An audiologist or speech-language pathologist who thereafter assumes the responsibility for such supervision shall obtain a certificate of approval to supervise an audiology or speech-language pathology assistant from the department prior to the use of the audiology or speech-language pathology assistant in the practice of audiology or speech-language pathology.

Source: Laws 1985, LB 129, § 24; Laws 1987, LB 473, § 30; Laws 1988, LB 1100, § 70; Laws 2007, LB247, § 30; Laws 2007, LB463, § 205.
Operative date June 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 205, and transferred to section 38-520 operative on December 1, 2008.

71-1,195.03 Audiology or speech-language pathology assistant; supervisor; department; disciplinary actions; procedure. The department may deny, suspend, limit, revoke, or otherwise discipline the registration of an audiology or speech-language pathology assistant or the approval of a supervising audiologist or speech-language pathologist granted under sections 71-1,195.01 and 71-1,195.02 upon the grounds and in accordance with the Uniform Licensing Law for any violation of sections 71-1,195.01 to 71-1,195.09.

Source: Laws 1985, LB 129, § 25; Laws 1988, LB 1100, § 71; Laws 1991, LB 456, § 29; Laws 2007, LB247, § 31; Laws 2007, LB247, § 91; Laws 2007, LB463, § 1319.
Operative date June 1, 2007.

Note: This section was amended by Laws 2007, LB 247, section 31, and repealed by Laws 2007, LB 247, section 91, and LB 463, section 1319. The repeal became operative on December 1, 2008.

71-1,195.04 Audiology or speech-language pathology assistant; initial training. Initial training for an audiology or speech-language pathology assistant shall consist of graduation from an accredited program with a focus on communication disorders which shall include:

- (1) An overview of speech, language, and dysphagia and the practice of audiology and speech-language pathology;
- (2) Ethical and legal responsibilities;
- (3) Normal language, speech, and hearing functions and swallowing physiology;
- (4) Observing and recording patient progress;
- (5) Behavior management and modification; and
- (6) Record keeping.

Source: Laws 1985, LB 129, § 26; Laws 1988, LB 1100, § 72; Laws 2007, LB247, § 32; Laws 2007, LB463, § 206.
Operative date June 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 206, and transferred to section 38-521 operative on December 1, 2008.

71-1,195.05 Audiology or speech-language pathology assistant; aural rehabilitation programs; training. In addition to the initial training required by section 71-1,195.04, an audiology or speech-language pathology assistant assigned to provide aural rehabilitation programs shall have additional training which shall include, but not be limited to:

- (1) Information concerning the nature of hearing loss;
- (2) Purposes and principles of auditory and visual training;
- (3) Maintenance and use of amplification devices; and
- (4) Such other subjects as the department may deem appropriate.

Source: Laws 1985, LB 129, § 27; Laws 1988, LB 1100, § 73; Laws 2007, LB247, § 33; Laws 2007, LB463, § 207.
Operative date June 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 207, and transferred to section 38-522 operative on December 1, 2008.

71-1,195.06 Audiology or speech-language pathology assistant; duties and activities. An audiology or speech-language pathology assistant may, under the supervision of a licensed audiologist or speech-language pathologist, perform the following duties and activities:

- (1) Implement programs and procedures designed by a licensed audiologist or speech-language pathologist;
- (2) Maintain records of implemented procedures which document a patient's responses to treatment;
- (3) Provide input for interdisciplinary treatment planning, inservice training, and other activities directed by a licensed audiologist or speech-language pathologist;
- (4) Prepare instructional material to facilitate program implementation as directed by a licensed audiologist or speech-language pathologist;
- (5) Follow plans, developed by the licensed audiologist or speech-language pathologist, that provide specific sequences of treatment to individuals with communicative disorders or dysphagia; and
- (6) Chart or log patient responses to the treatment plan.

Source: Laws 1985, LB 129, § 28; Laws 1988, LB 1100, § 74; Laws 2007, LB247, § 34; Laws 2007, LB463, § 208.
Operative date June 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 208, and transferred to section 38-523 operative on December 1, 2008.

71-1,195.07 Audiology or speech-language pathology assistant; acts prohibited. An audiology or speech-language pathology assistant shall not:

- (1) Evaluate or diagnose any type of communication disorder;
- (2) Evaluate or diagnose any type of dysphagia;
- (3) Interpret evaluation results or treatment progress;
- (4) Consult or counsel, independent of the licensed audiologist or speech-language pathologist, with a patient, a patient's family, or staff regarding the nature or degree of communication disorders or dysphagia;
- (5) Plan patient treatment programs;
- (6) Represent himself or herself as an audiologist or speech-language pathologist or as a provider of speech, language, swallowing, or hearing treatment or assessment services;
- (7) Independently initiate, modify, or terminate any treatment program; or
- (8) Fit or dispense hearing aids.

Source: Laws 1985, LB 129, § 29; Laws 1988, LB 1100, § 75; Laws 2007, LB247, § 35; Laws 2007, LB463, § 209.
Operative date June 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 209, and transferred to section 38-524 operative on December 1, 2008.

71-1,195.08 Audiology or speech-language pathology assistant; supervisor; duties. (1) When supervising an audiology or speech-language pathology assistant, the supervising audiologist or speech-language pathologist shall:

(a) Provide supervision for no more than two audiology or speech-language pathology assistants at one time;

(b) Provide direct onsite supervision for the first two treatment sessions of each patient's care;

(c) Provide direct onsite supervision of at least twenty percent of all subsequent treatment sessions per quarter;

(d) Provide at least ten hours of inservice training per registration period, either formal or informal, which is directly related to the particular services provided by the audiology or speech-language pathology assistant; and

(e) Prepare semiannual performance evaluations of the audiology or speech-language pathology assistant to be reviewed with the audiology or speech-language pathology assistant on a one-to-one basis.

(2) The supervising audiologist or speech-language pathologist shall be responsible for all aspects of patient treatment.

Source: Laws 1985, LB 129, § 30; Laws 1988, LB 1100, § 76; Laws 2007, LB247, § 36; Laws 2007, LB463, § 210.
Operative date June 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 210, and transferred to section 38-525 operative on December 1, 2008.

71-1,195.09 Audiology or speech-language pathology assistant; evaluation, supervision, training; supervisor; report required. The supervising audiologist or speech-language pathologist shall provide annual reports to the department verifying that evaluation, supervision, and training required by section 71-1,195.08 has been completed. The audiologist or speech-language pathologist shall keep accurate records of such evaluation, supervision, and training.

Source: Laws 1985, LB 129, § 31; Laws 1988, LB 1100, § 77; Laws 2007, LB247, § 37; Laws 2007, LB247, § 69; Laws 2007, LB463, § 211.
Operative date June 1, 2007.

Note: This section was also amended by Laws 2007, LB 247, section 69, and LB 463, section 211, and transferred to section 38-526 operative on December 1, 2008.

71-1,196 Transferred to section 38-512.

(v) INSURER REPORT VIOLATIONS

71-1,198 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,199 Transferred to section 38-1,129.

71-1,200 Insurer; report to department; when required. Any insurer shall report to the department, on a form and in the manner specified by the department by rule and regulation, any facts known to the insurer, including, but not limited to, the identity of the practitioner and patient, when the insurer:

(1) Has reasonable grounds to believe that a practitioner has committed a violation of the regulatory provisions governing the profession of such practitioner;

(2) Has made payment due to an adverse judgment, settlement, or award resulting from a professional liability claim against the insurer, a health care facility or health care service as defined in the Health Care Facility Licensure Act, or a practitioner, including settlements made prior to suit in which the patient releases any professional liability claim against the insurer, health care facility or health care service, or practitioner, arising out of the acts or omissions of the practitioner;

(3) Takes an adverse action affecting the coverage provided by the insurer to a practitioner due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment. For purposes of this section, adverse action shall not include raising a practitioner's rates for professional liability coverage unless it is based upon grounds that would be reportable and no prior report has been made to the department; or

(4) Has been requested by the department to provide information.

The report shall be made within thirty days after the date of the action, event, or request. Nothing in this section or section 71-1,199 shall be construed to require an insurer to report based on information gained due to the filing by a practitioner or on behalf of a practitioner of a claim for payment under his or her health insurance policy.

Source: Laws 1982, LB 421, § 3; Laws 1991, LB 456, § 30; Laws 1994, LB 1223, § 21; Laws 1999, LB 828, § 134; Laws 2000, LB 819, § 93; Laws 2007, LB152, § 1; Laws 2007, LB247, § 62; Laws 2007, LB463, § 130.
Effective date September 1, 2007.

Note: This section was also amended by Laws 2007, LB 247, section 62, and LB 463, section 130, and transferred to section 38-1,130 operative on December 1, 2008.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

71-1,201 Transferred to section 38-1,133.**71-1,202 Transferred to section 38-134.**

71-1,203 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,204 Transferred to section 38-1,135.**71-1,205 Transferred to section 38-1,136.**

(w) PRACTICE OF PSYCHOLOGY

71-1,206.01 Transferred to section 38-3102.

71-1,206.02 Transferred to section 38-3103.

71-1,206.03 Transferred to section 38-3104.

71-1,206.04 Transferred to section 38-3105.

71-1,206.05 **Department, defined.** Department shall mean the Division of Public Health of the Department of Health and Human Services.

Source: Laws 1994, LB 1210, § 67; Laws 1996, LB 1044, § 473; Laws 2007, LB296, § 357; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

71-1,206.06 Transferred to section 38-3106.

71-1,206.07 Transferred to section 38-3107.

71-1,206.08 Transferred to section 38-3108.

71-1,206.09 Transferred to section 38-3109.

71-1,206.10 Transferred to section 38-3110.

71-1,206.11 **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,206.12 **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,206.14 Transferred to section 38-3111.

71-1,206.15 Transferred to section 38-3114.

71-1,206.16 Transferred to section 38-3115.

71-1,206.17 **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,206.18 **Person licensed under prior law but not certified in clinical psychology; licensure; conditions.** Except as provided in this section, a person licensed as a psychologist under the law in effect immediately prior to September 1, 1994, but not certified in clinical psychology:

(1) Shall be issued a special license to practice psychology that continues existing requirements for supervision. Any psychological practice that involves the diagnosis and treatment of major mental and emotional disorders by a person holding a special license shall be done under the supervision of a licensed psychologist approved by the board in accordance with regulations developed by the board. A psychologist licensed under this subdivision shall not supervise mental health practitioners or independently evaluate persons under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act. Supervisory relationships shall be registered with the board by a notarized letter signed by both the supervisor and supervisee. The letter shall contain:

- (a) A general description of the supervisee's practice and the plan of supervision;
- (b) A statement by the supervisor that he or she has the necessary experience and training to supervise this area of practice; and
- (c) A statement by the supervisor that he or she accepts the legal and professional responsibility for the supervisee's practice with individuals having major mental and emotional disorders.

Psychologists practicing with special licenses may continue to use the title licensed psychologist but shall disclose supervisory relationships to clients or patients for whom supervision is required and to third-party payors when relevant. Psychologists who wish to continue supervisory relationships existing immediately prior to September 1, 1994, with qualified physicians may do so if a letter as described in this subdivision is received by the board within three months after such date;

(2) May apply for licensure before December 1, 1995, by demonstrating that he or she has rendered psychological diagnostic and treatment services as the major element of his or her employment in an educational, correctional, or health care setting for at least four years after licensure. A psychologist demonstrating such experience shall be deemed to have met equivalent requirements for licensure to those required by section 71-1,206.15 and shall be eligible for renewal of licensure in accordance with the Uniform Licensing Law. For purposes of this subdivision:

- (a) Educational settings shall be those which are part of a university or state college and those regulated by the State Department of Education;
- (b) Correctional settings shall be those under the jurisdiction of the Department of Correctional Services; and
- (c) Health care settings shall be hospitals, skilled nursing facilities, clinics, and mental health centers licensed by the Division of Public Health of the Department of Health and Human Services and accredited by the Joint Commission on Hospital Accreditation, by the Commission on Accreditation of Rehabilitation Facilities, by the Department of Health and Human Services, or by a similar or an equivalent accrediting body as determined by the board.

The four-year period shall be continuous and represent four years of full-time employment or a combination of half-time and full-time employment that totals four years. For purposes of this subdivision, year shall mean a calendar year except for educational settings that may

define the employment year in nine-month increments. In no case shall an applicant receive four years of credit for experience accrued in less than four calendar years; or

(3) May apply for licensure within three months of September 1, 1994, by demonstrating that he or she has been employed as full-time faculty in a program of graduate education in psychology approved by the American Psychological Association for a period not less than five years after licensure. A person demonstrating such employment shall be deemed to have met equivalent requirements for licensure under section 71-1,206.15 and shall be eligible for renewal of licensure in accordance with the Uniform Licensing Law.

A person licensed but not certified to practice clinical psychology under the law in effect immediately prior to September 1, 1994, who has failed the examination for clinical certification shall not be eligible to apply under subdivisions (2) and (3) of this section. The board may deny an application under such subdivisions if the applicant has had any action taken against him or her for violations of the laws licensing psychologists by the board or the boards of other jurisdictions. Such person shall be granted a special license under subdivision (1) of this section.

Source: Laws 1994, LB 1210, § 80; Laws 1995, LB 406, § 19; Laws 1996, LB 1044, § 474; Laws 2006, LB 1199, § 33; Laws 2007, LB296, § 358; Laws 2007, LB463, § 1050.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 1050, and transferred to section 38-3116 operative on December 1, 2008.

Cross Reference

Nebraska Mental Health Commitment Act, see section 71-901.

Sex Offender Commitment Act, see section 71-1201.

71-1,206.19 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,206.20 Transferred to section 38-3117.

71-1,206.21 Transferred to section 38-3118.

71-1,206.22 Transferred to section 38-3119.

71-1,206.23 Transferred to section 38-3120.

71-1,206.24 Transferred to section 38-3128.

71-1,206.25 Transferred to section 38-3113.

71-1,206.26 Transferred to section 38-3129.

71-1,206.27 Transferred to section 38-3130.

71-1,206.28 Repealed. Laws 2007, LB 463, § 1319.

Operative date December 1, 2008.

- 71-1,206.29** Transferred to section 38-3131.
- 71-1,206.30** Transferred to section 38-3132.
- 71-1,206.31** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-1,206.32** Transferred to section 38-3122.
- 71-1,206.33** Transferred to section 38-3123.
- 71-1,206.34** Transferred to section 38-3124.
- 71-1,206.35** Transferred to section 38-3125.

(x) PRACTICE OF RESPIRATORY CARE

- 71-1,227** Transferred to section 38-3206.
- 71-1,228** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-1,229** Transferred to section 38-3214.
- 71-1,230** Transferred to section 38-3215.
- 71-1,231** Transferred to section 38-3209.
- 71-1,233** Transferred to section 38-3210.
- 71-1,234** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-1,235** Transferred to section 38-3208.
- 71-1,236** Transferred to section 38-3216.

(y) PRACTICE OF ATHLETIC TRAINING

71-1,238 **Terms, defined.** For purposes of sections 71-1,238 to 71-1,242, unless the context otherwise requires:

(1) Athletic trainer means a person who is responsible for the prevention, emergency care, first aid, treatment, and rehabilitation of athletic injuries under guidelines established with a licensed physician and who is licensed to perform the functions set out in section 71-1,240. When athletic training is provided in a hospital outpatient department or clinic or an outpatient-based medical facility, the athletic trainer will perform the functions described in section 71-1,240 with a referral from a licensed physician for athletic training;

(2) Athletic training means the prevention, evaluation, emergency care, first aid, treatment, and rehabilitation of athletic injuries utilizing the treatments set out in section 71-1,240;

(3) Athletic injuries means the types of musculoskeletal injury or common illness and conditions which athletic trainers are educated to treat or refer, incurred by athletes, which prevent or limit participation in sports or recreation;

(4) Board means the Board of Athletic Training;

(5) Department means the Division of Public Health of the Department of Health and Human Services; and

(6) Practice site means the location where the athletic trainer practices athletic training.

Source: Laws 1986, LB 355, § 1; Laws 1996, LB 1044, § 477; Laws 1999, LB 178, § 2; Laws 1999, LB 828, § 140; Laws 2003, LB 242, § 65; Laws 2007, LB296, § 359; Laws 2007, LB463, § 174. Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 174, and transferred to section 38-402 operative on December 1, 2008.

71-1,239.01 Transferred to section 38-410.

71-1,240 Transferred to section 38-409.

71-1,241 Transferred to section 38-411.

71-1,242 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

(bb) PRACTICE OF MASSAGE THERAPY

71-1,278 Transferred to section 38-1702.

71-1,279 Transferred to section 38-1708.

71-1,280 Transferred to section 38-1709.

71-1,281 Transferred to section 38-1710.

71-1,281.01 Transferred to section 38-1711.

71-1,282 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

(cc) MEDICAL NUTRITION THERAPY

71-1,285 Transferred to section 38-1802.

71-1,286 Transferred to section 38-1803.

71-1,287 Transferred to section 38-1812.

71-1,289 Transferred to section 38-1813.

71-1,290 License; issuance. The department shall issue a license, signed by the director, to each person who is qualified to be a licensed medical nutrition therapist.

Source: Laws 1988, LB 557, § 6; Laws 1995, LB 406, § 25; Laws 1996, LB 1044, § 478; Laws 2007, LB296, § 360; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

71-1,291 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,291.01 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,292 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,293 Transferred to section 38-1816.

71-1,294 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

(dd) MENTAL HEALTH PRACTITIONERS

71-1,295 Transferred to section 38-2102.

71-1,296 Definitions, where found. For purposes of sections 71-1,295 to 71-1,338, the definitions found in sections 71-1,297 to 71-1,311 shall be used.

Source: Laws 1993, LB 669, § 15; Laws 2007, LB247, § 38; Laws 2007, LB463, § 722.
Operative date June 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 722, and transferred to section 38-2103 operative on December 1, 2008.

71-1,297 Transferred to section 38-2104.

71-1,298 Transferred to section 38-2105.

71-1,299 Transferred to section 38-2106.

71-1,300 Transferred to section 38-2107.

71-1,301 Transferred to section 38-2108.

71-1,302 Transferred to section 38-2109.

71-1,303 Transferred to section 38-2110.

71-1,304 Transferred to section 38-2111.

71-1,305 Transferred to section 38-2112.

71-1,305.01 Independent mental health practice, defined. (1) Independent mental health practice means the provision of treatment, assessment, psychotherapy, counseling, or equivalent activities to individuals, couples, families, or groups for behavioral, cognitive, social, mental, or emotional disorders, including interpersonal or personal situations.

(2) Independent mental health practice includes diagnosing major mental illness or disorder, using psychotherapy with individuals suspected of having major mental or emotional disorders, or using psychotherapy to treat the concomitants of organic illness, with or without consultation with a qualified physician or licensed psychologist.

(3) Independent mental health practice does not include the practice of psychology or medicine, prescribing drugs or electroconvulsive therapy, treating physical disease, injury, or deformity, or measuring personality or intelligence for the purpose of diagnosis or treatment planning.

Source: Laws 2007, LB247, § 39.
Operative date June 1, 2007.

Note: Because of the enactment of Laws 2007, LB 463, and the recodification of credentialing of health occupations and professions which resulted in the transfer of sections to Chapter 38, this section was transferred to section 38-2113 operative on December 1, 2008.

71-1,306 Transferred to section 38-2114.

71-1,307 Mental health practice, defined; limitation on practice. (1) Mental health practice means the provision of treatment, assessment, psychotherapy, counseling, or equivalent activities to individuals, couples, families, or groups for behavioral, cognitive, social, mental, or emotional disorders, including interpersonal or personal situations.

(2) Mental health practice does not include:

- (a) The practice of psychology or medicine;
- (b) Prescribing drugs or electroconvulsive therapy;
- (c) Treating physical disease, injury, or deformity;

(d) Diagnosing major mental illness or disorder except in consultation with a qualified physician or a psychologist licensed to engage in the practice of psychology as provided in section 71-1,206.14;

(e) Measuring personality or intelligence for the purpose of diagnosis or treatment planning;

(f) Using psychotherapy with individuals suspected of having major mental or emotional disorders except in consultation with a qualified physician or licensed psychologist; or

(g) Using psychotherapy to treat the concomitants of organic illness except in consultation with a qualified physician or licensed psychologist.

(3) Mental health practice includes the initial assessment of organic mental or emotional disorders for the purpose of referral or consultation.

(4) Nothing in sections 71-1,306, 71-1,310, and 71-1,311 shall be deemed to constitute authorization to engage in activities beyond those described in this section. Persons certified under sections 71-1,295 to 71-1,338 but not licensed under section 71-1,314 shall not engage in mental health practice.

Source: Laws 1993, LB 669, § 26; Laws 1994, LB 1210, § 96; Laws 2007, LB247, § 40; Laws 2007, LB463, § 733.
Operative date June 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 733, and transferred to section 38-2115 operative on December 1, 2008.

71-1,308 Mental health practitioner, independent mental health practitioner, defined; use of titles. (1) Mental health practitioner means a person who holds himself or herself out as a person qualified to engage in mental health practice or a person who offers or renders mental health practice services. Independent mental health practitioner means a person who holds himself or herself out as a person qualified to engage in independent mental health practice or a person who offers or renders independent mental health practice services.

(2) A person who is licensed as a mental health practitioner or an independent mental health practitioner and certified as a master social worker may use the title licensed clinical social worker. A person who is licensed as a mental health practitioner or an independent mental health practitioner and certified as a professional counselor may use the title licensed professional counselor. A person who is licensed as a mental health practitioner or an independent mental health practitioner and certified as a marriage and family therapist may use the title licensed marriage and family therapist. No person shall use the title licensed clinical social worker, licensed professional counselor, or licensed marriage and family therapist unless he or she is licensed and certified as provided in this subsection.

(3) A mental health practitioner shall not represent himself or herself as a physician or psychologist and shall not represent his or her services as being medical or psychological in nature. An independent mental health practitioner shall not represent himself or herself as a physician or psychologist.

Source: Laws 1993, LB 669, § 27; Laws 2007, LB247, § 41; Laws 2007, LB463, § 734.
Operative date June 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 734, and transferred to section 38-2116 operative on December 1, 2008.

71-1,309 Transferred to section 38-2117.

71-1,310 Transferred to section 38-2118.

71-1,311 Transferred to section 38-2119.

71-1,312 License; required; exceptions. No person shall engage in mental health practice or hold himself or herself out as a mental health practitioner unless he or she is licensed for such purpose pursuant to the Uniform Licensing Law, except that this section shall not be construed to prevent:

(1) Qualified members of other professions who are licensed, certified, or registered by this state from practice of any mental health activity consistent with the scope of practice of their respective professions;

(2) Alcohol and drug counselors who are licensed by the Division of Public Health of the Department of Health and Human Services and problem gambling counselors who are certified by the Department of Health and Human Services from practicing their profession. Such exclusion shall include students training and working under the supervision of an individual qualified under section 71-1,356;

(3) Any person employed by an agency, bureau, or division of the federal government from discharging his or her official duties, except that if such person engages in mental health practice in this state outside the scope of such official duty or represents himself or herself as a licensed mental health practitioner, he or she shall be licensed;

(4) Teaching or the conduct of research related to mental health services or consultation with organizations or institutions if such teaching, research, or consultation does not involve the delivery or supervision of mental health services to individuals or groups of individuals who are themselves, rather than a third party, the intended beneficiaries of such services;

(5) The delivery of mental health services by:

(a) Students, interns, or residents whose activities constitute a part of the course of study for medicine, psychology, nursing, school psychology, social work, clinical social work, counseling, marriage and family therapy, or other health care or mental health service professions; or

(b) Individuals seeking to fulfill postgraduate requirements for licensure when those individuals are supervised by a licensed professional consistent with the applicable regulations of the appropriate professional board;

(6) Duly recognized members of the clergy from providing mental health services in the course of their ministerial duties and consistent with the codes of ethics of their profession if they do not represent themselves to be mental health practitioners;

(7) The incidental exchange of advice or support by persons who do not represent themselves as engaging in mental health practice, including participation in self-help groups when the leaders of such groups receive no compensation for their participation and do not represent themselves as mental health practitioners or their services as mental health practice;

(8) Any person providing emergency crisis intervention or referral services or limited services supporting a service plan developed by and delivered under the supervision of a licensed mental health practitioner, licensed physician, or a psychologist licensed to engage in the practice of psychology if such persons are not represented as being licensed mental health practitioners or their services are not represented as mental health practice; or

(9) Staff employed in a program designated by an agency of state government to provide rehabilitation and support services to individuals with mental illness from completing a rehabilitation assessment or preparing, implementing, and evaluating an individual rehabilitation plan.

Source: Laws 1993, LB 669, § 31; Laws 1994, LB 1210, § 99; Laws 1995, LB 275, § 5; Laws 1996, LB 1044, § 479; Laws 2004, LB 1083, § 114; Laws 2007, LB296, § 361; Laws 2007, LB463, § 739. Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 739, and transferred to section 38-2121 operative on December 1, 2008.

71-1,313 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,314 Transferred to section 38-2122.

71-1,314.01 Transferred to section 38-2123.

71-1,314.02 Independent mental health practitioner; qualifications. (1) No person shall hold himself or herself out as an independent mental health practitioner unless he or she is licensed as such by the department. A person shall be qualified to be a licensed independent mental health practitioner if he or she:

(a)(i)(A) Graduated with a masters' or doctoral degree from an educational program which is accredited, at the time of graduation or within four years after graduation, by the Council for Accreditation of Counseling and Related Educational Programs, the Commission on Accreditation for Marriage and Family Therapy Education, or the Council on Social Work Education or (B) graduated with a masters' or doctoral degree from an educational program deemed by the board to be equivalent in didactic content and supervised clinical experience to an accredited program;

(ii) Is licensed as a provisional mental health practitioner or a licensed mental health practitioner; and

(iii) Has three thousand hours of experience obtained in a period of not less than two nor more than five years and supervised by a licensed physician, a licensed psychologist, or a licensed independent mental health practitioner, one-half of which is comprised of experience with clients diagnosed under the major mental illness or disorder category; or

(b)(i) Graduated from an educational program which does not meet the requirements of subdivision (a)(i) of this subsection;

(ii) Is licensed as a provisional mental health practitioner or a mental health practitioner; and

(iii) Has seven thousand hours of experience obtained in a period of not less than ten years and supervised by a licensed physician, a licensed psychologist, or a licensed independent mental health practitioner, one-half of which is comprised of experience with clients diagnosed under the major mental illness or disorder category.

(2) The experience required under this section shall be documented in a reasonable form and manner as prescribed by the board, which may consist of sworn statements from the applicant

and his or her employers and supervisors. The board shall not in any case require the applicant to produce individual case records.

(3) The application for an independent mental health practitioner license shall include the applicant's social security number.

Source: Laws 2007, LB247, § 42.
Operative date June 1, 2007.

Note: Because of the enactment of Laws 2007, LB 463, and the recodification of credentialing of health occupations and professions which resulted in the transfer of sections to Chapter 38, this section was transferred to section 38-2124 operative on December 1, 2008.

71-1,315 Mental health practitioner; independent mental health practitioner; license; renewal; continuing competency requirements. Each licensed mental health practitioner and each licensed independent mental health practitioner shall, in the period since his or her license was issued or last renewed, complete continuing competency activities as required by the board pursuant to section 71-161.09 as a prerequisite for the licensee's next subsequent license renewal.

Source: Laws 1993, LB 669, § 34; Laws 2002, LB 1021, § 34; Laws 2007, LB247, § 43; Laws 2007, LB247, § 91; Laws 2007, LB463, § 1319.
Operative date June 1, 2007.

Note: This section was amended by Laws 2007, LB 247, section 43, and repealed by Laws 2007, LB 247, section 91, and LB 463, section 1319. The repeal became operative on December 1, 2008.

71-1,316 Rules and regulations. The department, upon the advice of the board, shall adopt and promulgate rules and regulations to administer sections 71-1,312 to 71-1,315, including rules and regulations governing:

- (1) Ways of clearly identifying students, interns, and other persons providing mental health practice services under supervision;
- (2) The rights of persons receiving mental health practice services;
- (3) The rights of clients to gain access to their records, including the right of any client to receive one complete copy of his or her record free of charge;
- (4) The contents and methods of distribution of disclosure statements to clients of licensed mental health practitioners; and
- (5) Approval of examinations and educational programs.

Source: Laws 1993, LB 669, § 35; Laws 2007, LB247, § 44; Laws 2007, LB247, § 91; Laws 2007, LB463, § 1319.
Operative date June 1, 2007.

Note: This section was amended by Laws 2007, LB 247, section 44, and repealed by Laws 2007, LB 247, section 91, and LB 463, section 1319. The repeal became operative on December 1, 2008.

71-1,317 Transferred to section 38-2126.

- 71-1,318** Transferred to section 38-2127.
- 71-1,319** Transferred to section 38-2128.
- 71-1,319.01** Transferred to section 38-2129.
- 71-1,320** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-1,321** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-1,322** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-1,323** Transferred to section 38-2131.
- 71-1,324** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-1,325** Transferred to section 38-2132.
- 71-1,326** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-1,327** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-1,328** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-1,329** Transferred to section 38-2133.
- 71-1,330** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-1,331** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-1,332** Transferred to section 38-3124.
- 71-1,333** **Certificates; license; issuance.** (1) The department shall issue a certificate, signed by the director, to each person who is qualified to be a certified master social worker, certified social worker, certified professional counselor, or certified marriage and family therapist.
- (2) The department shall issue a license, signed by the director, to each person who is qualified to be a licensed mental health practitioner or licensed independent mental health practitioner.

Source: Laws 1986, LB 579, § 6; Laws 1988, LB 1100, § 92; R.S.1943, (1990), § 71-1,270; Laws 1993, LB 669, § 52; Laws 2007, LB247, § 45; Laws 2007, LB247, § 91; Laws 2007, LB463, § 1319. Operative date June 1, 2007.

Note: This section was amended by Laws 2007, LB 247, section 45, and repealed by Laws 2007, LB 247, section 91, and LB 463, section 1319. The repeal became operative on December 1, 2008.

71-1,335 Mental health practitioners; confidentiality; exception. No person licensed or certified pursuant to sections 71-1,295 to 71-1,338 shall disclose any information he or she may have acquired from any person consulting him or her in his or her professional capacity except:

(1) With the written consent of the person or, in the case of death or disability, of the person's personal representative, any other person authorized to sue on behalf of the person, or the beneficiary of an insurance policy on the person's life, health, or physical condition. When more than one person in a family receives therapy conjointly, each such family member who is legally competent to execute a waiver shall agree to the waiver referred to in this subdivision. Without such a waiver from each family member legally competent to execute a waiver, a practitioner shall not disclose information received from any family member who received therapy conjointly;

(2) As such privilege is limited by the laws of the State of Nebraska or as the board may determine by rule and regulation;

(3) When the person waives the privilege by bringing charges against the licensee; or

(4) When there is a duty to warn under the limited circumstances set forth in section 71-1,336.

Source: Laws 1993, LB 669, § 54; Laws 1994, LB 1210, § 109; Laws 1999, LB 828, § 150; Laws 2007, LB247, § 46; Laws 2007, LB463, § 753. Operative date June 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 753, and transferred to section 38-2136 operative on December 1, 2008.

71-1,336 Mental health practitioner; duty to warn of patient's threatened violent behavior; limitation on liability. (1) There shall be no monetary liability on the part of, and no cause of action shall arise against, any person who is licensed or certified pursuant to sections 71-1,295 to 71-1,338 for failing to warn of and protect from a patient's threatened violent behavior or failing to predict and warn of and protect from a patient's violent behavior except when the patient has communicated to the mental health practitioner a serious threat of physical violence against himself, herself, or a reasonably identifiable victim or victims.

(2) The duty to warn of or to take reasonable precautions to provide protection from violent behavior shall arise only under the limited circumstances specified in subsection (1) of this section. The duty shall be discharged by the mental health practitioner if reasonable efforts are made to communicate the threat to the victim or victims and to a law enforcement agency.

(3) No monetary liability and no cause of action shall arise under section 71-1,335 against a licensee or certificate holder for information disclosed to third parties in an effort to discharge a duty arising under subsection (1) of this section according to the provisions of subsection (2) of this section.

Source: Laws 1993, LB 669, § 55; Laws 2007, LB247, § 47; Laws 2007, LB463, § 754.
Operative date June 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 754, and transferred to section 38-2137 operative on December 1, 2008.

71-1,337 Code of ethics; board; duties; duty to report violations. The Board of Mental Health Practice shall adopt a code of ethics which is essentially in agreement with the current code of ethics of the national and state associations of the specialty professions included in mental health practice and which the board deems necessary to assure adequate protection of the public in the provision of mental health services to the public. A violation of the code of ethics shall be considered an act of unprofessional conduct.

The board shall ensure through the code of ethics and the rules and regulations adopted and promulgated under sections 71-1,295 to 71-1,338 that persons licensed or certified pursuant to sections 71-1,295 to 71-1,338 limit their practice to demonstrated areas of competence as documented by relevant professional education, training, and experience.

Intentional failure by a mental health practitioner to report known acts of unprofessional conduct by a mental health practitioner to the department or the board shall be considered an act of unprofessional conduct and shall be grounds for disciplinary action under appropriate sections of the Uniform Licensing Law unless the mental health practitioner has acquired such knowledge in a professional relationship otherwise protected by confidentiality.

Source: Laws 1993, LB 669, § 56; Laws 1999, LB 828, § 151; Laws 2007, LB247, § 48; Laws 2007, LB463, § 755.
Operative date June 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 755, and transferred to section 38-2138 operative on December 1, 2008.

71-1,338 Mental health practice; violations; penalty; disciplinary action. Any person who violates any provision of the Uniform Licensing Law related to mental health practice shall be guilty of a Class III misdemeanor, and any such violation by a person licensed or certified pursuant to sections 71-1,295 to 71-1,338 shall be cause for disciplinary action as provided in sections 71-147 to 71-161.18.

Source: Laws 1993, LB 669, § 57; Laws 2007, LB247, § 49; Laws 2007, LB247, § 91; Laws 2007, LB463, § 1319.
Operative date June 1, 2007.

Note: This section was amended by Laws 2007, LB 247, section 49, and repealed by Laws 2007, LB 247, section 91, and LB 463, section 1319. The repeal became operative on December 1, 2008.

(ee) REPORTS OF CRIMINAL VIOLATIONS
AND PROFESSIONAL LIABILITY JUDGMENTS

71-1,339 Clerk of county or district court; report convictions and judgments of licensees, certificate holders, and registrants; Attorney General or prosecutor; duty. The clerk of any county or district court in this state shall report to the Division of Public Health of the Department of Health and Human Services the conviction of any person licensed, certified, or registered by the department under the Advanced Practice Registered Nurse Licensure Act, the Certified Registered Nurse Anesthetist Act, the Clinical Nurse Specialist Practice Act, the Emergency Medical Services Act, the Licensed Practical Nurse-Certified Act, the Nebraska Certified Nurse Midwifery Practice Act, the Nebraska Cosmetology Act, the Nurse Practice Act, the Nurse Practitioner Act, the Occupational Therapy Practice Act, the Uniform Controlled Substances Act, the Uniform Licensing Law, the Wholesale Drug Distributor Licensing Act, or sections 71-3702 to 71-3715, 71-4701 to 71-4719, or 71-6053 to 71-6068 of any felony or of any misdemeanor involving the use, sale, distribution, administration, or dispensing of a controlled substance, alcohol or chemical impairment, or substance abuse and shall also report a judgment against any such licensee, certificate holder, or registrant arising out of a claim of professional liability. The Attorney General or city or county prosecutor prosecuting any such criminal action and plaintiff in any such civil action shall provide the court with information concerning the licensure, certification, or registration of the defendant or party. Notice to the department shall be filed within thirty days after the date of conviction or judgment in a manner agreed to by the Director of Public Health of the division and the State Court Administrator.

Source: Laws 1994, LB 1223, § 24; Laws 1995, LB 563, § 39; Laws 1996, LB 414, § 10; Laws 1996, LB 1044, § 480; Laws 1997, LB 138, § 45; Laws 2000, LB 1115, § 24; Laws 2005, LB 256, § 32; Laws 2007, LB296, § 362; Laws 2007, LB463, § 137.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 137, and transferred to section 38-1,137 operative on December 1, 2008.

Cross Reference

Advanced Practice Registered Nurse Licensure Act, see section 71-17,131.
Certified Registered Nurse Anesthetist Act, see section 71-1728.
Clinical Nurse Specialist Practice Act, see section 71-17,117.
Emergency Medical Services Act, see section 71-5172.
Licensed Practical Nurse-Certified Act, see section 71-1772.
Nebraska Certified Nurse Midwifery Practice Act, see section 71-1738.
Nebraska Cosmetology Act, see section 71-340.
Nurse Practice Act, see section 71-1,132.01.
Nurse Practitioner Act, see section 71-1704.
Occupational Therapy Practice Act, see section 71-6101.
Uniform Controlled Substances Act, see section 28-401.01.
Uniform Licensing Law, see section 71-101.
Wholesale Drug Distributor Licensing Act, see section 71-7401.

(ff) HEALTH CARE CREDENTIALING

71-1,340 Repealed. Laws 2007, LB 463, § 1319.

Operative date December 1, 2008.

71-1,341 Terms, defined. For purposes of sections 71-1,340 to 71-1,342:

(1) Credentialing means the grant of authority or approval by the state to health care practitioners, facilities, and providers who provide health care or related services through licensure, certification, registration, approval of provider status, enrollment in a program for reimbursement, and other similar activities;

(2) Department means the Division of Public Health of the Department of Health and Human Services;

(3) Director means the Director of Public Health of the Division of Public Health;

(4) Facility means a health care facility or health care service licensed under the Health Care Facility Licensure Act to provide health care;

(5) Health care practitioner means an individual licensed, certified, or otherwise authorized by law to administer health care in the course of professional practice; and

(6) Provider means a person providing health care services under an agreement with the state and its contractors for payment for those services.

Source: Laws 1997, LB 183, § 2; Laws 2000, LB 819, § 94; Laws 2007, LB296, § 363; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

71-1,342 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1,343 Transferred to section 38-128.

(gg) PRACTICE OF ACUPUNCTURE

71-1,344 Transferred to section 38-2006.

71-1,345 Transferred to section 38-2057.

71-1,346 Transferred to section 38-2058.

71-1,347 Transferred to section 38-2059.

71-1,348 Transferred to section 38-2060.

71-1,349 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

(hh) ALCOHOL AND DRUG COUNSELING

71-1,351 Transferred to section 38-302.

- 71-1,352** Transferred to section 38-311.
- 71-1,353** Transferred to section 38-312.
- 71-1,354** Transferred to section 38-313.
- 71-1,355** Transferred to section 38-314.
- 71-1,356** Transferred to section 38-315.
- 71-1,357** Transferred to section 38-316.
- 71-1,358** Transferred to section 38-317.
- 71-1,359** Transferred to section 38-318.
- 71-1,360** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-1,361** Transferred to section 38-321.

(ii) PHYSICAL THERAPY PRACTICE ACT

- 71-1,362** Transferred to section 38-2901.
- 71-1,363** Transferred to section 38-2902.
- 71-1,364** Transferred to section 38-2903.
- 71-1,365** Transferred to section 38-2904.
- 71-1,366** Transferred to section 38-2905.
- 71-1,367** **Department, defined.** Department means the Division of Public Health of the Department of Health and Human Services.

Source: Laws 2006, LB 994, § 123; Laws 2007, LB296, § 364; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

- 71-1,368** Transferred to section 38-2906.
- 71-1,369** Transferred to section 38-2907.
- 71-1,370** Transferred to section 38-2908.

- 71-1,371 Transferred to section 38-2909.
- 71-1,372 Transferred to section 38-2910.
- 71-1,373 Transferred to section 38-2911.
- 71-1,374 Transferred to section 38-2912.
- 71-1,375 Transferred to section 38-2913.
- 71-1,376 Transferred to section 38-2914.
- 71-1,377 Transferred to section 38-2915.
- 71-1,378 Transferred to section 38-2916.
- 71-1,379 Transferred to section 38-2917.
- 71-1,380 Transferred to section 38-2918.
- 71-1,381 Transferred to section 38-2919.
- 71-1,382 Transferred to section 38-2920.
- 71-1,383 Transferred to section 38-2921.
- 71-1,384 Transferred to section 38-2922.
- 71-1,385 Transferred to section 38-2927.
- 71-1,386 Transferred to section 38-2928.
- 71-1,387 Transferred to section 38-2929.
- 71-1,388 Transferred to section 38-2926.
- 71-1,389 **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

(jj) PERFUSION PRACTICE ACT

71-1,390 Act, how cited. Sections 71-1,390 to 71-1,401 shall be known and may be cited as the Perfusion Practice Act.

Source: Laws 2007, LB236, § 8; Laws 2007, LB247, § 76.
Effective date September 1, 2007.

Note: This section was also amended by Laws 2007, LB 247, section 76, and transferred to section 38-2701 operative on December 1, 2008.

71-1,391 Legislative findings and declarations. The Legislature finds and declares that the public interest requires the regulation of the practice of perfusion and the establishment of clear licensure standards for perfusionists and that the health and welfare of the residents of the State of Nebraska will be protected by identifying to the public those individuals who are qualified and legally authorized to practice perfusion.

Source: Laws 2007, LB236, § 9.
Effective date September 1, 2007.

Note: Because of the enactment of Laws 2007, LB 463, and the recodification of credentialing of health occupations and professions which resulted in the transfer of sections to Chapter 38, this section was transferred to section 38-2702 operative on December 1, 2008.

71-1,392 Terms, defined. For purposes of the Perfusion Practice Act:

- (1) Board means the Board of Medicine and Surgery;
- (2) Committee means the Perfusionist Committee created under section 71-1,401;
- (3) Extracorporeal circulation means the diversion of a patient's blood through a heart-lung machine or a similar device that assumes the functions of the patient's heart, lungs, kidney, liver, or other organs;
- (4) Perfusion means the functions necessary for the support, treatment, measurement, or supplementation of the cardiovascular, circulatory, and respiratory systems or other organs, or a combination of such activities, and to ensure the safe management of physiologic functions by monitoring and analyzing the parameters of the systems under an order and under the supervision of a licensed physician, including:
 - (a) The use of extracorporeal circulation, long-term cardiopulmonary support techniques including extracorporeal carbon dioxide removal and extracorporeal membrane oxygenation, and associated therapeutic and diagnostic technologies;
 - (b) Counterpulsation, ventricular assistance, autotransfusion, blood conservation techniques, myocardial and organ preservation, extracorporeal life support, and isolated limb perfusion;
 - (c) The use of techniques involving blood management, advanced life support, and other related functions; and
 - (d) In the performance of the acts described in subdivisions (a) through (c) of this subdivision:
 - (i) The administration of:
 - (A) Pharmacological and therapeutic agents; and
 - (B) Blood products or anesthetic agents through the extracorporeal circuit or through an intravenous line as ordered by a physician;
 - (ii) The performance and use of:
 - (A) Anticoagulation monitoring and analysis;
 - (B) Physiologic monitoring and analysis;
 - (C) Blood gas and chemistry monitoring and analysis;

- (D) Hematologic monitoring and analysis;
- (E) Hypothermia and hyperthermia;
- (F) Hemoconcentration and hemodilution; and
- (G) Hemodialysis; and

(iii) The observation of signs and symptoms related to perfusion services, the determination of whether the signs and symptoms exhibit abnormal characteristics, and the implementation of appropriate reporting, clinical perfusion protocols, or changes in, or the initiation of, emergency procedures; and

(5) Perfusionist means a person who is licensed to practice perfusion pursuant to the Perfusion Practice Act.

Source: Laws 2007, LB236, § 10.
Effective date September 1, 2007.

Note: Because of the enactment of Laws 2007, LB 463, and the recodification of credentialing of health occupations and professions which resulted in the transfer of sections to Chapter 38, this section was transferred to section 38-2703 operative on December 1, 2008.

71-1,393 License required; exceptions. After September 1, 2007, no person shall practice perfusion, whether or not compensation is received or expected, unless the person holds a license to practice perfusion under the Perfusion Practice Act, except that nothing in the act shall be construed to:

(1) Prohibit any person credentialed to practice under any other law from engaging in the practice for which he or she is credentialed;

(2) Prohibit any student enrolled in a bona fide perfusion training program recognized by the board from performing those duties which are necessary for the student's course of study, if the duties are performed under the supervision and direction of a perfusionist who is on duty and immediately available in the assigned patient care area; or

(3) Prohibit any person from practicing perfusion within the scope of his or her official duties when employed by an agency, bureau, or division of the federal government, serving in the Armed Forces or the Public Health Service of the United States, or employed by the Veterans Administration.

Source: Laws 2007, LB236, § 11.
Effective date September 1, 2007.

Note: Because of the enactment of Laws 2007, LB 463, and the recodification of credentialing of health occupations and professions which resulted in the transfer of sections to Chapter 38, this section was transferred to section 38-2704 operative on December 1, 2008.

71-1,394 License requirements. To be eligible to be licensed as a perfusionist, an applicant shall fulfill the following requirements:

(1) Submit a complete application to the department as required under the Uniform Licensing Law;

(2) Pay the fee established and collected as provided in sections 71-162 to 71-162.05;

(3) Submit evidence of successful completion of a perfusion education program with standards established by the Accreditation Committee for Perfusion Education and approved by the Commission on Accreditation of Allied Health Education Programs or a program with substantially equivalent education standards approved by the board; and

(4) Submit evidence of successful completion of the certification examinations offered by the American Board of Cardiovascular Perfusion, or its successor, or a substantially equivalent examination approved by the board.

Source: Laws 2007, LB236, § 12; Laws 2007, LB247, § 77.
Effective date September 1, 2007.

Note: This section was also amended by Laws 2007, LB 247, section 77, and transferred to section 38-2705 operative on December 1, 2008.

71-1,395 Education and examination requirements; waiver. The board may waive the education and examination requirements under section 71-1,394 for an applicant who:

(1) Within one hundred eighty days after September 1, 2007, submits evidence satisfactory to the board that he or she has been operating cardiopulmonary bypass systems for cardiac surgical patients as his or her primary function in a licensed health care facility for at least two of the last ten years prior to September 1, 2007;

(2) Submits evidence of holding a current certificate as a Certified Clinical Perfusionist issued by the American Board of Cardiovascular Perfusion, or its successor; or

(3) Submits evidence of holding a credential as a perfusionist issued by another state or possession of the United States or the District of Columbia which has standards substantially equivalent to those of this state.

Source: Laws 2007, LB236, § 13.
Effective date September 1, 2007.

Note: Because of the enactment of Laws 2007, LB 463, and the recodification of credentialing of health occupations and professions which resulted in the transfer of sections to Chapter 38, this section was transferred to section 38-2706 operative on December 1, 2008.

71-1,396 Temporary license. The department shall issue a temporary license to a person who has applied for licensure pursuant to the Perfusion Practice Act and who, in the judgment of the department, with the recommendation of the board, is eligible for examination. An applicant with a temporary license may practice only under the direct supervision of a perfusionist. The board may adopt and promulgate rules and regulations governing such direct supervision which do not require the immediate physical presence of the supervising perfusionist. A temporary license shall expire one year after the date of issuance and may be renewed for a subsequent one-year period, subject to the rules and regulations adopted under the act. A temporary license shall be surrendered to the department upon its expiration.

Source: Laws 2007, LB236, § 14.
Effective date September 1, 2007.

Note: Because of the enactment of Laws 2007, LB 463, and the recodification of credentialing of health occupations and professions which resulted in the transfer of sections to Chapter 38, this section was transferred to section 38-2707 operative on December 1, 2008.

71-1,397 Continuing competency requirements. Each perfusionist shall, in the period since his or her license was issued or last renewed, complete continuing competency activities as required by the board pursuant to section 71-161.09 as a prerequisite for the licensee's next subsequent license renewal.

Source: Laws 2007, LB236, § 15; Laws 2007, LB247, § 91.
Effective date September 1, 2007.

Note: This section was repealed by Laws 2007, LB 247, section 91. The repeal became operative on December 1, 2008.

71-1,398 Title and abbreviation; use. No person shall use the title Perfusionist, the abbreviation LP, or any other title, designation, words, letters, abbreviations, or insignia indicating the practice of perfusion unless licensed to practice perfusion.

Source: Laws 2007, LB236, § 16.
Effective date September 1, 2007.

Note: Because of the enactment of Laws 2007, LB 463, and the recodification of credentialing of health occupations and professions which resulted in the transfer of sections to Chapter 38, this section was transferred to section 38-2709 operative on December 1, 2008.

71-1,399 Rules and regulations. The department, with the recommendation of the board, shall adopt and promulgate rules and regulations to carry out the Perfusion Practice Act.

Source: Laws 2007, LB236, § 17.
Effective date September 1, 2007.

Note: Because of the enactment of Laws 2007, LB 463, and the recodification of credentialing of health occupations and professions which resulted in the transfer of sections to Chapter 38, this section was transferred to section 38-2710 operative on December 1, 2008.

71-1,400 Code of ethics; record of licensees. The board shall adopt and publish a code of ethics for perfusionists and maintain a record of every perfusionist licensed in this state which includes his or her place of business, place of residence, and license date and number.

Source: Laws 2007, LB236, § 18.
Effective date September 1, 2007.

Note: Because of the enactment of Laws 2007, LB 463, and the recodification of credentialing of health occupations and professions which resulted in the transfer of sections to Chapter 38, this section was transferred to section 38-2711 operative on December 1, 2008.

71-1,401 Perfusionist Committee; created; membership; powers and duties; expenses. (1) There is created the Perfusionist Committee which shall review and make recommendations to the board regarding all matters relating to perfusionists that come before the board. Such matters shall include, but not be limited to, (a) applications for licensure, (b) perfusionist education, (c) scope of practice, (d) proceedings arising relating to disciplinary actions, (e) perfusionist licensure requirements, and (f) continuing competency. The committee shall be directly responsible to the board.

(2) The committee shall be appointed by the State Board of Health and shall be composed of two perfusionists and one physician who has clinical experience with perfusionists. The physician member may also be a member of the Board of Medicine and Surgery. The chairperson of the committee shall be elected by a majority vote of the committee members. All appointments shall be for five-year terms, at staggered intervals. Members shall serve no more than two consecutive terms. Reappointments shall be made by the State Board of Health.

(3) The committee shall meet on a regular basis, and committee members shall, in addition to necessary traveling and lodging expenses, receive a per diem for each day actually engaged in the discharge of his or her duties, including compensation for the time spent in traveling to and from the place of conducting business. Traveling and lodging expenses shall be reimbursed on the same basis as provided in sections 81-1174 to 81-1177. The compensation shall not exceed fifty dollars per day and shall be determined by the committee with the approval of the department.

Source: Laws 2007, LB236, § 19.
Effective date September 1, 2007.

Note: Because of the enactment of Laws 2007, LB 463, and the recodification of credentialing of health occupations and professions which resulted in the transfer of sections to Chapter 38, this section was transferred to section 38-2712 operative on December 1, 2008.

ARTICLE 3

NEBRASKA COSMETOLOGY ACT

Section.

- 71-340. Transferred to section 38-1001.
- 71-341. Transferred to section 38-1002.
- 71-342. Transferred to section 38-1003.
- 71-343. Transferred to section 38-1004.
- 71-344. Transferred to section 38-1005.
- 71-345. Transferred to section 38-1006.
- 71-346. Transferred to section 38-1007.
- 71-346.01. Transferred to section 38-1008.
- 71-346.02. Transferred to section 38-1009.
- 71-346.03. Transferred to section 38-1010.

- 71-346.04. Transferred to section 38-1011.
- 71-347. Transferred to section 38-1012.
- 71-348. Transferred to section 38-1013.
- 71-349. Transferred to section 38-1014.
- 71-350. Transferred to section 38-1015.
- 71-351. Transferred to section 38-1016.
- 71-352. Transferred to section 38-1017.
- 71-353. Transferred to section 38-1018.
- 71-354. Department, defined.
- 71-355. Repealed. Laws 2007, LB 296, § 815.
- 71-356. Transferred to section 38-1019.
- 71-356.01. Transferred to section 38-1020.
- 71-356.02. Transferred to section 38-1021.
- 71-356.03. Transferred to section 38-1022.
- 71-356.04. Transferred to section 38-1023.
- 71-356.05. Transferred to section 38-1024.
- 71-357. Transferred to section 38-1025.
- 71-357.01. Transferred to section 38-1026.
- 71-357.02. Transferred to section 38-1027.
- 71-357.03. Transferred to section 38-1028.
- 71-358. Transferred to section 38-1029.
- 71-358.01. Transferred to section 38-1030.
- 71-359. Transferred to section 38-1031.
- 71-360. Transferred to section 38-1032.
- 71-360.01. Transferred to section 38-1033.
- 71-361.01. Transferred to section 38-1034.
- 71-361.02. Transferred to section 38-1035.
- 71-361.03. Transferred to section 38-1036.
- 71-361.04. Transferred to section 38-1037.
- 71-361.05. Transferred to section 38-1038.
- 71-361.06. Transferred to section 38-1039.
- 71-361.07. Transferred to section 38-1040.
- 71-361.08. Transferred to section 38-1041.
- 71-361.09. Transferred to section 38-1042.
- 71-362. Transferred to section 38-1043.
- 71-362.01. Transferred to section 38-1044.
- 71-363. Repealed. Laws 2007, LB 463, § 1319.
- 71-363.01. Transferred to section 38-1045.
- 71-364. Transferred to section 38-1046.
- 71-365. Transferred to section 38-1047.
- 71-365.01. Transferred to section 38-1048.

- 71-365.02. Transferred to section 38-1049.
- 71-368. Transferred to section 38-1050.
- 71-369. Transferred to section 38-1051.
- 71-370. Transferred to section 38-1052.
- 71-370.01. Transferred to section 38-1053.
- 71-370.02. Transferred to section 38-1054.
- 71-371. Transferred to section 38-1055.
- 71-372. Transferred to section 38-1056.
- 71-373. Repealed. Laws 2007, LB 463, § 1319.
- 71-374. Transferred to section 38-1057.
- 71-375. Repealed. Laws 2007, LB 463, § 1319.
- 71-376. Repealed. Laws 2007, LB 463, § 1319.
- 71-377. Repealed. Laws 2007, LB 463, § 1319.
- 71-378. Repealed. Laws 2007, LB 463, § 1319.
- 71-379. Repealed. Laws 2007, LB 463, § 1319.
- 71-380. Repealed. Laws 2007, LB 463, § 1319.
- 71-385. Transferred to section 38-1058.
- 71-385.01. Transferred to section 38-1059.
- 71-385.02. Transferred to section 38-1060.
- 71-386. Transferred to section 38-1061.
- 71-387. Transferred to section 38-1062.
- 71-388. Transferred to section 38-1063.
- 71-389. Transferred to section 38-1064.
- 71-390. Examinations; requirements; grades.
- 71-391. Repealed. Laws 2007, LB 463, § 1319.
- 71-392. Repealed. Laws 2007, LB 463, § 1319.
- 71-393. Repealed. Laws 2007, LB 463, § 1319.
- 71-394. Transferred to section 38-1066.
- 71-394.01. Repealed. Laws 2007, LB 463, § 1319.
- 71-395. Transferred to section 38-1067.
- 71-396. Transferred to section 38-1068.
- 71-397. Repealed. Laws 2007, LB 463, § 1319.
- 71-398. Transferred to section 38-1069.
- 71-399. Transferred to section 38-1070.
- 71-3,100. Transferred to section 38-1071.
- 71-3,101. Transferred to section 38-1072.
- 71-3,102. Transferred to section 38-10,103.
- 71-3,103. Repealed. Laws 2007, LB 463, § 1319.
- 71-3,104. Transferred to section 38-1073.
- 71-3,105. Transferred to section 38-1074.

- 71-3,106. Transferred to section 38-1075.
- 71-3,106.01. Transferred to section 38-1076.
- 71-3,107. Repealed. Laws 2007, LB 463, § 1319.
- 71-3,108. Repealed. Laws 2007, LB 463, § 1319.
- 71-3,112. Repealed. Laws 2007, LB 463, § 1319.
- 71-3,115. Repealed. Laws 2007, LB 463, § 1319.
- 71-3,117. Transferred to section 38-1077.
- 71-3,119. Transferred to section 38-1078.
- 71-3,119.01. Transferred to section 38-1079.
- 71-3,119.02. Transferred to section 38-1080.
- 71-3,119.03. Transferred to section 38-1081.
- 71-3,120. Transferred to section 38-1082.
- 71-3,121. Transferred to section 38-1083.
- 71-3,122. Transferred to section 38-1084.
- 71-3,123. Transferred to section 38-1085.
- 71-3,124. Transferred to section 38-1086.
- 71-3,125. Transferred to section 38-1087.
- 71-3,126. Transferred to section 38-1088.
- 71-3,127. Transferred to section 38-1089.
- 71-3,128. Transferred to section 38-1090.
- 71-3,129. Transferred to section 38-1091.
- 71-3,130. Transferred to section 38-1092.
- 71-3,131. Transferred to section 38-1093.
- 71-3,132. Repealed. Laws 2007, LB 463, § 1319.
- 71-3,133. Transferred to section 38-1094.
- 71-3,134. Transferred to section 38-1095.
- 71-3,135. Transferred to section 38-1096.
- 71-3,136. Transferred to section 38-1097.
- 71-3,137. Transferred to section 38-1098.
- 71-3,138. Transferred to section 38-1099.
- 71-3,138.02. Transferred to section 38-10,100.
- 71-3,139. Transferred to section 38-10,101.
- 71-3,140. Transferred to section 38-10,102.
- 71-3,141. Transferred to section 38-10,104.
- 71-3,142. Transferred to section 38-10,105.
- 71-3,143. Transferred to section 38-10,106.
- 71-3,144. Transferred to section 38-10,107.
- 71-3,145. Repealed. Laws 2007, LB 463, § 1319.
- 71-3,146. Transferred to section 38-10,108.
- 71-3,147. Transferred to section 38-10,109.
- 71-3,148. Transferred to section 38-10,110.

- 71-3,149. Transferred to section 38-10,111.
- 71-3,150. Transferred to section 38-10,112.
- 71-3,151. Transferred to section 38-10,113.
- 71-3,152. Transferred to section 38-10,114.
- 71-3,153. Transferred to section 38-10,115.
- 71-3,154. Transferred to section 38-10,116.
- 71-3,155. Repealed. Laws 2007, LB 463, § 1319.
- 71-3,156. Transferred to section 38-10,117.
- 71-3,157. Transferred to section 38-10,118.
- 71-3,158. Transferred to section 38-10,119.
- 71-3,159. Transferred to section 38-10,120.
- 71-3,160. Transferred to section 38-10,121.
- 71-3,161. Transferred to section 38-10,122.
- 71-3,162. Transferred to section 38-10,123.
- 71-3,163. Transferred to section 38-10,124.
- 71-3,164. Transferred to section 38-10,125.
- 71-3,165. Repealed. Laws 2007, LB 463, § 1319.
- 71-3,166. Repealed. Laws 2007, LB 463, § 1319.
- 71-3,167. Repealed. Laws 2007, LB 463, § 1319.
- 71-3,168. Repealed. Laws 2007, LB 463, § 1319.
- 71-3,169. Transferred to section 38-10,169.
- 71-3,170. Transferred to section 38-10,170.
- 71-3,171. Repealed. Laws 2007, LB 463, § 1319.
- 71-3,172. Repealed. Laws 2007, LB 463, § 1319.
- 71-3,173. Disciplinary action; hearing.
- 71-3,174. Violations; penalties; injunction.
- 71-3,175. Repealed. Laws 2007, LB 463, § 1319.
- 71-3,176. Repealed. Laws 2007, LB 463, § 1319.
- 71-3,177. Transferred to section 38-10,171.
- 71-3,178. Repealed. Laws 2007, LB 463, § 1319.
- 71-3,179. Repealed. Laws 2007, LB 463, § 1319.
- 71-3,180. Transferred to section 38-10,126.
- 71-3,181. Transferred to section 38-10,127.
- 71-3,182. Repealed. Laws 2007, LB 463, § 1319.
- 71-3,183. Transferred to section 38-10,128.
- 71-3,184. Transferred to section 38-10,129.
- 71-3,185. Repealed. Laws 2007, LB 463, § 1319.
- 71-3,186. Transferred to section 38-10,130.
- 71-3,187. Transferred to section 38-10,131.
- 71-3,188. Repealed. Laws 2007, LB 463, § 1319.

- 71-3,189. Repealed. Laws 2007, LB 463, § 1319.
- 71-3,190. Repealed. Laws 2007, LB 463, § 1319.
- 71-3,191. Transferred to section 38-10,132.
- 71-3,192. Transferred to section 38-10,133.
- 71-3,193. Transferred to section 38-10,134.
- 71-3,194. Transferred to section 38-10,135.
- 71-3,195. Transferred to section 38-10,136.
- 71-3,196. Repealed. Laws 2007, LB 463, § 1319.
- 71-3,197. Repealed. Laws 2007, LB 463, § 1319.
- 71-3,198. Repealed. Laws 2007, LB 463, § 1319.
- 71-3,202. Repealed. Laws 2007, LB 463, § 1319.
- 71-3,205. Repealed. Laws 2007, LB 463, § 1319.
- 71-3,206. Transferred to section 38-10,137.
- 71-3,208. Transferred to section 38-10,138.
- 71-3,209. Repealed. Laws 2007, LB 463, § 1319.
- 71-3,210. Transferred to section 38-10,139.
- 71-3,211. Transferred to section 38-10,140.
- 71-3,212. Transferred to section 38-10,141.
- 71-3,213. Transferred to section 38-10,142.
- 71-3,214. Transferred to section 38-10,143.
- 71-3,215. Transferred to section 38-10,144.
- 71-3,216. Transferred to section 38-10,145.
- 71-3,217. Transferred to section 38-10,146.
- 71-3,218. Transferred to section 38-10,147.
- 71-3,219. Transferred to section 38-10,148.
- 71-3,220. Transferred to section 38-10,149.
- 71-3,221. Transferred to section 38-10,150.
- 71-3,222. Transferred to section 38-10,151.
- 71-3,223. Transferred to section 38-10,152.
- 71-3,224. Transferred to section 38-10,153.
- 71-3,225. Transferred to section 38-10,154.
- 71-3,226. Transferred to section 38-10,155.
- 71-3,227. Transferred to section 38-10,156.
- 71-3,228. Transferred to section 38-10,157.
- 71-3,229. Transferred to section 38-10,158.
- 71-3,230. Transferred to section 38-10,159.
- 71-3,231. Transferred to section 38-10,160.
- 71-3,232. Transferred to section 38-10,161.
- 71-3,233. Transferred to section 38-10,162.
- 71-3,234. Transferred to section 38-10,163.
- 71-3,235. Transferred to section 38-10,164.

- 71-3,236. Transferred to section 38-10,165.
71-3,237. Transferred to section 38-10,166.
71-3,238. Transferred to section 38-10,167.

71-340 Transferred to section 38-1001.

71-341 Transferred to section 38-1002.

71-342 Transferred to section 38-1003.

71-343 Transferred to section 38-1004.

71-344 Transferred to section 38-1005.

71-345 Transferred to section 38-1006.

71-346 Transferred to section 38-1007.

71-346.01 Transferred to section 38-1008.

71-346.02 Transferred to section 38-1009.

71-346.03 Transferred to section 38-1010.

71-346.04 Transferred to section 38-1011.

71-347 Transferred to section 38-1012.

71-348 Transferred to section 38-1013.

71-349 Transferred to section 38-1014.

71-350 Transferred to section 38-1015.

71-351 Transferred to section 38-1016.

71-352 Transferred to section 38-1017.

71-353 Transferred to section 38-1018.

71-354 Department, defined. Department shall mean the Division of Public Health of the Department of Health and Human Services.

Source: Laws 1986, LB 318, § 15; Laws 1996, LB 1044, § 484; Laws 2007, LB296, § 365; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

- 71-355 **Repealed.** Laws 2007, LB 296, § 815.
- 71-356 **Transferred to section 38-1019.**
- 71-356.01 **Transferred to section 38-1020.**
- 71-356.02 **Transferred to section 38-1021.**
- 71-356.03 **Transferred to section 38-1022.**
- 71-356.04 **Transferred to section 38-1023.**
- 71-356.05 **Transferred to section 38-1024.**
- 71-357 **Transferred to section 38-1025.**
- 71-357.01 **Transferred to section 38-1026.**
- 71-357.02 **Transferred to section 38-1027.**
- 71-357.03 **Transferred to section 38-1028.**
- 71-358 **Transferred to section 38-1029.**
- 71-358.01 **Transferred to section 38-1030.**
- 71-359 **Transferred to section 38-1031.**
- 71-360 **Transferred to section 38-1032.**
- 71-360.01 **Transferred to section 38-1033.**
- 71-361.01 **Transferred to section 38-1034.**
- 71-361.02 **Transferred to section 38-1035.**
- 71-361.03 **Transferred to section 38-1036.**
- 71-361.04 **Transferred to section 38-1037.**
- 71-361.05 **Transferred to section 38-1038.**
- 71-361.06 **Transferred to section 38-1039.**
- 71-361.07 **Transferred to section 38-1040.**
- 71-361.08 **Transferred to section 38-1041.**

- 71-361.09** Transferred to section 38-1042.
- 71-362** Transferred to section 38-1043.
- 71-362.01** Transferred to section 38-1044.
- 71-363** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-363.01** Transferred to section 38-1045.
- 71-364** Transferred to section 38-1046.
- 71-365** Transferred to section 38-1047.
- 71-365.01** Transferred to section 38-1048.
- 71-365.02** Transferred to section 38-1049.
- 71-368** Transferred to section 38-1050.
- 71-369** Transferred to section 38-1051.
- 71-370** Transferred to section 38-1052.
- 71-370.01** Transferred to section 38-1053.
- 71-370.02** Transferred to section 38-1054.
- 71-371** Transferred to section 38-1055.
- 71-372** Transferred to section 38-1056.
- 71-373** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-374** Transferred to section 38-1057.
- 71-375** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-376** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-377** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-378** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-379 Repealed. Laws 2007, LB 463, § 1319.

Operative date December 1, 2008.

71-380 Repealed. Laws 2007, LB 463, § 1319.

Operative date December 1, 2008.

71-385 Transferred to section 38-1058.

71-385.01 Transferred to section 38-1059.

71-385.02 Transferred to section 38-1060.

71-386 Transferred to section 38-1061.

71-387 Transferred to section 38-1062.

71-388 Transferred to section 38-1063.

71-389 Transferred to section 38-1064.

71-390 Examinations; requirements; grades. (1) Examinations approved by the board may be national standardized examinations, but in all cases the examinations shall be related to the knowledge and skills necessary to perform the practices being examined and shall be related to the curricula required to be taught in schools of cosmetology or schools of electrolysis.

(2) The board shall fix the time and place of each examination no less than one year in advance. At least two examinations shall be given annually. All examinations shall be conducted in the city of Lincoln unless ordered otherwise by the department.

(3) If examinations are administered directly by the department, the examination shall be administered by a chief examiner who shall be an employee of the department. Persons serving as examiners for practical examinations administered directly by the department shall hold current licenses in the field of practice being examined or in cosmetology, except that examiners for instructors' examinations shall each hold an instructor's license, either active or inactive.

(4) Practical examinations shall be conducted in such a manner that the identity of the applicant is not disclosed to the examiners in any way.

(5) In order to successfully complete the examination, an applicant shall obtain an average grade of seventy-five percent on the written examination and an average grade of seventy-five percent with no individual subject grade below sixty-five percent on the practical examination.

(6) For practical examinations administered directly by the department, examination grades shall be approved by the board and the department before they become official. Any disagreements regarding a grade to be given among the examiners shall be settled by the chief

examiner. An examiner may appeal such a decision to the Director of Public Health or his or her designee.

(7) The department shall keep a permanent record of all grades received in examinations and shall provide any individual a copy of his or her grades upon request without charge.

(8) The department may adopt and promulgate rules and regulations to provide for procedures, development, administration, scoring, and reviewing of examinations and to protect the security of the contents of examination questions and answers in the examination review. The department shall not enter into an agreement to adopt an examination from a national testing service without first obtaining from such service detailed documentation of the process of examination development and maintenance.

Source: Laws 1986, LB 318, § 51; Laws 1987, LB 543, § 8; Laws 1995, LB 83, § 24; Laws 1997, LB 307, § 134; Laws 2007, LB296, § 366; Laws 2007, LB463, § 327.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 327, and transferred to section 38-1065 operative on December 1, 2008.

71-391 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-392 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-393 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-394 Transferred to section 38-1066.

71-394.01 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-395 Transferred to section 38-1067.

71-396 Transferred to section 38-1068.

71-397 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-398 Transferred to section 38-1069.

71-399 Transferred to section 38-1070.

71-3,100 Transferred to section 38-1071.

71-3,101 Transferred to section 38-1072.

71-3,102 Transferred to section 38-10,103.

- 71-3,103** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-3,104** **Transferred to section 38-1073.**
- 71-3,105** **Transferred to section 38-1074.**
- 71-3,106** **Transferred to section 38-1075.**
- 71-3,106.01** **Transferred to section 38-1076.**
- 71-3,107** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-3,108** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-3,112** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-3,115** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-3,117** **Transferred to section 38-1077.**
- 71-3,119** **Transferred to section 38-1078.**
- 71-3,119.01** **Transferred to section 38-1079.**
- 71-3,119.02** **Transferred to section 38-1080.**
- 71-3,119.03** **Transferred to section 38-1081.**
- 71-3,120** **Transferred to section 38-1082.**
- 71-3,121** **Transferred to section 38-1083.**
- 71-3,122** **Transferred to section 38-1084.**
- 71-3,123** **Transferred to section 38-1085.**
- 71-3,124** **Transferred to section 38-1086.**
- 71-3,125** **Transferred to section 38-1087.**
- 71-3,126** **Transferred to section 38-1088.**
- 71-3,127** **Transferred to section 38-1089.**

- 71-3,128 Transferred to section 38-1090.
- 71-3,129 Transferred to section 38-1091.
- 71-3,130 Transferred to section 38-1092.
- 71-3,131 Transferred to section 38-1093.
- 71-3,132 **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-3,133 Transferred to section 38-1094.
- 71-3,134 Transferred to section 38-1095.
- 71-3,135 Transferred to section 38-1096.
- 71-3,136 Transferred to section 38-1097.
- 71-3,137 Transferred to section 38-1098.
- 71-3,138 Transferred to section 38-1099.
- 71-3,138.02 Transferred to section 38-10,100.
- 71-3,139 Transferred to section 38-10,101.
- 71-3,140 Transferred to section 38-10,102.
- 71-3,141 Transferred to section 38-10,104.
- 71-3,142 Transferred to section 38-10,105.
- 71-3,143 Transferred to section 38-10,106.
- 71-3,144 Transferred to section 38-10,107.
- 71-3,145 **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-3,146 Transferred to section 38-10,108.
- 71-3,147 Transferred to section 38-10,109.
- 71-3,148 Transferred to section 38-10,110.
- 71-3,149 Transferred to section 38-10,111.

- 71-3,150** Transferred to section 38-10,112.
- 71-3,151** Transferred to section 38-10,113.
- 71-3,152** Transferred to section 38-10,114.
- 71-3,153** Transferred to section 38-10,115.
- 71-3,154** Transferred to section 38-10,116.
- 71-3,155** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-3,156** Transferred to section 38-10,117.
- 71-3,157** Transferred to section 38-10,118.
- 71-3,158** Transferred to section 38-10,119.
- 71-3,159** Transferred to section 38-10,120.
- 71-3,160** Transferred to section 38-10,121.
- 71-3,161** Transferred to section 38-10,122.
- 71-3,162** Transferred to section 38-10,123.
- 71-3,163** Transferred to section 38-10,124.
- 71-3,164** Transferred to section 38-10,125.
- 71-3,165** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-3,166** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-3,167** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-3,168** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-3,169** Transferred to section 38-10,169.
- 71-3,170** Transferred to section 38-10,170.
- 71-3,171** **Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-3,172 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-3,173 Disciplinary action; hearing. (1) The hearing in any disciplinary action shall be before the Director of Public Health or a hearing officer appointed by the director.

(2) The department may impose the disciplinary actions cited in section 71-155.

Source: Laws 1986, LB 318, § 134; Laws 1994, LB 1210, § 110; Laws 2003, LB 242, § 90; Laws 2007, LB296, § 367; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

71-3,174 Violations; penalties; injunction. (1) Persons, cosmetology, nail technology, and electrology establishments, and body art facilities holding licenses, registrations, or permits under the Nebraska Cosmetology Act shall be subject to the disciplinary actions described in section 71-155 and in sections 71-3,170 to 71-3,173 upon the finding by the Director of Public Health that a violation has occurred.

(2) A person not holding a license, registration, or permit under the Nebraska Cosmetology Act shall, upon conviction of violation of such act, except as specific penalties are otherwise imposed, be guilty of a Class II misdemeanor. Any such person convicted of a second violation of the Nebraska Cosmetology Act, except as specific penalties are otherwise imposed, shall be guilty of a Class I misdemeanor.

(3) Any person engaging in any of the practices regulated under the Nebraska Cosmetology Act, any person operating an establishment or a facility without being duly licensed or registered under the Nebraska Cosmetology Act, any person engaging in the provision of home services without having complied with such act, or any person found to be acting in violation of the Nebraska Cosmetology Act may be restrained by a temporary or permanent injunction.

Source: Laws 1986, LB 318, § 135; Laws 1995, LB 83, § 53; Laws 1999, LB 68, § 87; Laws 2002, LB 241, § 48; Laws 2004, LB 906, § 31; Laws 2007, LB296, § 368; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

71-3,175 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-3,176 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-3,177 Transferred to section 38-10,171.

71-3,178 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

- 71-3,179 Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-3,180 Transferred to section 38-10,126.**
- 71-3,181 Transferred to section 38-10,127.**
- 71-3,182 Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-3,183 Transferred to section 38-10,128.**
- 71-3,184 Transferred to section 38-10,129.**
- 71-3,185 Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-3,186 Transferred to section 38-10,130.**
- 71-3,187 Transferred to section 38-10,131.**
- 71-3,188 Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-3,189 Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-3,190 Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-3,191 Transferred to section 38-10,132.**
- 71-3,192 Transferred to section 38-10,133.**
- 71-3,193 Transferred to section 38-10,134.**
- 71-3,194 Transferred to section 38-10,135.**
- 71-3,195 Transferred to section 38-10,136.**
- 71-3,196 Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-3,197 Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-3,198 Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-3,202 Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

- 71-3,205 Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-3,206 Transferred to section 38-10,137.**
- 71-3,208 Transferred to section 38-10,138.**
- 71-3,209 Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-3,210 Transferred to section 38-10,139.**
- 71-3,211 Transferred to section 38-10,140.**
- 71-3,212 Transferred to section 38-10,141.**
- 71-3,213 Transferred to section 38-10,142.**
- 71-3,214 Transferred to section 38-10,143.**
- 71-3,215 Transferred to section 38-10,144.**
- 71-3,216 Transferred to section 38-10,145.**
- 71-3,217 Transferred to section 38-10,146.**
- 71-3,218 Transferred to section 38-10,147.**
- 71-3,219 Transferred to section 38-10,148.**
- 71-3,220 Transferred to section 38-10,149.**
- 71-3,221 Transferred to section 38-10,150.**
- 71-3,222 Transferred to section 38-10,151.**
- 71-3,223 Transferred to section 38-10,152.**
- 71-3,224 Transferred to section 38-10,153.**
- 71-3,225 Transferred to section 38-10,154.**
- 71-3,226 Transferred to section 38-10,155.**
- 71-3,227 Transferred to section 38-10,156.**
- 71-3,228 Transferred to section 38-10,157.**

- 71-3,229** Transferred to section 38-10,158.
- 71-3,230** Transferred to section 38-10,159.
- 71-3,231** Transferred to section 38-10,160.
- 71-3,232** Transferred to section 38-10,161.
- 71-3,233** Transferred to section 38-10,162.
- 71-3,234** Transferred to section 38-10,163.
- 71-3,235** Transferred to section 38-10,164.
- 71-3,236** Transferred to section 38-10,165.
- 71-3,237** Transferred to section 38-10,166.
- 71-3,238** Transferred to section 38-10,167.

ARTICLE 4

HEALTH CARE FACILITIES

Section.

- 71-401. Act, how cited.
- 71-403. Definitions, where found.
- 71-410. Department, defined.
- 71-411. Director, defined.
- 71-414. Health care practitioner facility, defined.
- 71-415. Health care service, defined.
- 71-425. Pharmacy, defined.
- 71-427.01. Representative peer review organization, defined.
- 71-434. License fees.
- 71-445. Discrimination or retaliation prohibited.
- 71-448. License; disciplinary action; grounds.
- 71-452. License; disciplinary actions; rights of licensee.
- 71-453. License; disciplinary actions; informal conference; procedure.

71-401 Act, how cited. Sections 71-401 to 71-459 shall be known and may be cited as the Health Care Facility Licensure Act.

Source: Laws 2000, LB 819, § 1; Laws 2001, LB 398, § 65; Laws 2004, LB 1005, § 41; Laws 2007, LB203, § 1.
Effective date September 1, 2007.

71-403 Definitions, where found. For purposes of the Health Care Facility Licensure Act, unless the context otherwise requires, the definitions found in sections 71-404 to 71-431 shall apply.

Source: Laws 2000, LB 819, § 3; Laws 2007, LB203, § 2.
Effective date September 1, 2007.

71-410 Department, defined. Department means the Division of Public Health of the Department of Health and Human Services.

Source: Laws 2000, LB 819, § 10; Laws 2007, LB296, § 369.
Operative date July 1, 2007.

71-411 Director, defined. Director means the Director of Public Health of the Division of Public Health.

Source: Laws 2000, LB 819, § 11; Laws 2007, LB296, § 370.
Operative date July 1, 2007.

71-414 Health care practitioner facility, defined. Health care practitioner facility means the residence, office, or clinic of a practitioner or group of practitioners credentialed under the Uniform Credentialing Act or any distinct part of such residence, office, or clinic.

Source: Laws 2000, LB 819, § 14; Laws 2007, LB463, § 1179.
Operative date December 1, 2008.

Cross Reference

Uniform Credentialing Act, see section 38-101.

71-415 Health care service, defined. Health care service means an adult day service, a home health agency, a hospice or hospice service, or a respite care service. Health care service does not include an in-home personal services agency as defined in section 71-6501.

Source: Laws 2000, LB 819, § 15; Laws 2007, LB236, § 43.
Effective date September 1, 2007.

71-425 Pharmacy, defined. Pharmacy means a facility advertised as a pharmacy, drug store, hospital pharmacy, dispensary, or any combination of such titles where drugs or devices are dispensed as defined in the Pharmacy Practice Act.

Source: Laws 2000, LB 819, § 25; Laws 2001, LB 398, § 66; Laws 2007, LB463, § 1180.
Operative date December 1, 2008.

Cross Reference

Pharmacy Practice Act, see section 38-2801.

71-427.01 Representative peer review organization, defined. Representative peer review organization means a utilization and quality control peer review organization as

defined in section 1152 of the Social Security Act, 42 U.S.C. 1320c-1, as such section existed on September 1, 2007.

Source: Laws 2007, LB203, § 3.
Effective date September 1, 2007.

71-434 License fees. (1) Licensure activities under the Health Care Facility Licensure Act shall be funded by license fees. An applicant for an initial or renewal license under section 71-433 shall pay a license fee as provided in this section.

(2) License fees shall include a base fee of fifty dollars and an additional fee based on:

(a) Variable costs to the department of inspections, architectural plan reviews, and receiving and investigating complaints, including staff salaries, travel, and other similar direct and indirect costs;

(b) The number of beds available to persons residing at the health care facility;

(c) The program capacity of the health care facility or health care service; or

(d) Other relevant factors as determined by the department.

Such additional fee shall be no more than two thousand six hundred dollars for a hospital or a health clinic operating as an ambulatory surgical center, no more than two thousand dollars for an assisted-living facility, a health clinic providing hemodialysis or labor and delivery services, an intermediate care facility, an intermediate care facility for the mentally retarded, a nursing facility, or a skilled nursing facility, no more than one thousand dollars for home health agencies, hospice services, and centers for the developmentally disabled, and no more than seven hundred dollars for all other health care facilities and health care services.

(3) If the licensure application is denied, the license fee shall be returned to the applicant, except that the department may retain up to twenty-five dollars as an administrative fee and may retain the entire license fee if an inspection has been completed prior to such denial.

(4) The department shall also collect the fee provided in subsection (1) of this section for reinstatement of a license that has lapsed or has been suspended or revoked. The department shall collect a fee of ten dollars for a duplicate original license.

(5) The department shall collect a fee from any applicant or licensee requesting an informal conference with a representative peer review organization under section 71-452 to cover all costs and expenses associated with such conference.

(6) The department shall adopt and promulgate rules and regulations for the establishment of license fees under this section.

(7) The department shall remit all license fees collected under this section to the State Treasurer for credit to the Health and Human Services Cash Fund. License fees collected under this section shall only be used for activities related to the licensure of health care facilities and health care services.

Source: Laws 2000, LB 819, § 34; Laws 2002, LB 1062, § 42; Laws 2003, LB 415, § 1; Laws 2005, LB 246, § 1; Laws 2007, LB203, § 4; Laws 2007, LB296, § 371.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 203, section 4, with LB 296, section 371, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 203 became effective September 1, 2007.

71-445 Discrimination or retaliation prohibited. A health care facility or health care service shall not discriminate or retaliate against a person residing in, served by, or employed at such facility or service who has initiated or participated in any proceeding authorized by the Health Care Facility Licensure Act or who has presented a complaint or provided information to the administrator of such facility or service or the Department of Health and Human Services. Such person may maintain an action for any type of relief, including injunctive and declaratory relief, permitted by law.

Source: Laws 2000, LB 819, § 45; Laws 2007, LB296, § 372.
Operative date July 1, 2007.

71-448 License; disciplinary action; grounds. The Division of Public Health of the Department of Health and Human Services may take disciplinary action against a license issued under the Health Care Facility Licensure Act on any of the following grounds:

(1) Violation of any of the provisions of the Assisted-Living Facility Act, the Health Care Facility Licensure Act, the Nebraska Nursing Home Act, or the rules and regulations adopted and promulgated under such acts;

(2) Committing or permitting, aiding, or abetting the commission of any unlawful act;

(3) Conduct or practices detrimental to the health or safety of a person residing in, served by, or employed at the health care facility or health care service;

(4) A report from an accreditation body or public agency sanctioning, modifying, terminating, or withdrawing the accreditation or certification of the health care facility or health care service;

(5) Failure to allow an agent or employee of the Department of Health and Human Services access to the health care facility or health care service for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the Department of Health and Human Services;

(6) Discrimination or retaliation against a person residing in, served by, or employed at the health care facility or health care service who has submitted a complaint or information to the Department of Health and Human Services;

(7) Discrimination or retaliation against a person residing in, served by, or employed at the health care facility or health care service who has presented a grievance or information to the office of the state long-term care ombudsman;

(8) Failure to allow a state long-term care ombudsman or an ombudsman advocate access to the health care facility or health care service for the purposes of investigation necessary to carry out the duties of the office of the state long-term care ombudsman as specified in the rules and regulations adopted and promulgated by the Department of Health and Human Services;

(9) Violation of the Emergency Box Drug Act;

- (10) Failure to file a report required by section 38-1,127;
- (11) Violation of the Medication Aide Act; or
- (12) Failure to file a report of suspected abuse or neglect as required by sections 28-372 and 28-711.

Source: Laws 2000, LB 819, § 48; Laws 2004, LB 1005, § 44; Laws 2007, LB296, § 373; Laws 2007, LB463, § 1181.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 373, with LB 463, section 1181, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Assisted-Living Facility Act, see section 71-5901.

Emergency Box Drug Act, see section 71-2410.

Medication Aide Act, see section 71-6718.

Nebraska Nursing Home Act, see section 71-6037.

71-452 License; disciplinary actions; rights of licensee. Within fifteen days after service of a notice under section 71-451, an applicant or a licensee shall notify the director in writing that the applicant or licensee (1) desires to contest the notice and request an informal conference with a representative of the department in person or by other means at the request of the applicant or licensee, (2) desires to contest the notice and request an informal conference with a representative peer review organization with which the department has contracted, (3) desires to contest the notice and request a hearing, or (4) does not contest the notice. If the director does not receive such notification within such fifteen-day period, the action of the department shall be final.

Source: Laws 2000, LB 819, § 52; Laws 2007, LB203, § 5.
Effective date September 1, 2007.

71-453 License; disciplinary actions; informal conference; procedure. (1) The director shall assign a representative of the department, other than the individual who did the inspection upon which the notice is based, or a representative peer review organization to hold an informal conference with the applicant or licensee within thirty days after receipt of a request made under subdivision (1) or (2) of section 71-452. Within twenty working days after the conclusion of the conference, the representative or representative peer review organization shall report in writing to the department its conclusion regarding whether to affirm, modify, or dismiss the notice and the specific reasons for the conclusion and shall provide a copy of the report to the director and the applicant or licensee.

(2) Within ten working days after receiving a report under subsection (1) of this section, the department shall consider such report and affirm, modify, or dismiss the notice and shall state the specific reasons for such decision, including, if applicable, the specific reasons for not adopting the conclusion of the representative or representative peer review organization as contained in such report. The department shall provide the applicant or licensee with a copy of such decision by certified mail to the last address shown in the records of the department.

If the applicant or licensee desires to contest an affirmed or modified notice, the applicant or licensee shall notify the director in writing within five working days after receiving such decision that the applicant or licensee requests a hearing.

(3) If an applicant or a licensee successfully demonstrates during an informal conference or a hearing that the deficiencies should not have been cited in the notice, (a) the deficiencies shall be removed from the notice and the deficiency statement and (b) any sanction imposed solely as a result of those cited deficiencies shall be rescinded.

Source: Laws 2000, LB 819, § 53; Laws 2007, LB203, § 6.
Effective date September 1, 2007.

ARTICLE 5

DISEASES

(a) CONTAGIOUS, INFECTIOUS, AND MALIGNANT DISEASES

Section.

- 71-501. Contagious diseases; local public health department; county board of health; powers and duties.
- 71-501.02. Acquired immunodeficiency syndrome program; department; powers.
- 71-502. Communicable diseases; rules and regulations; control; powers of Department of Health and Human Services.
- 71-502.01. Sexually transmitted diseases; enumerated.
- 71-502.02. Sexually transmitted diseases; rules and regulations.
- 71-502.03. Pregnant women; subject to syphilis test; fee.
- 71-502.04. Laboratory; test results; notification required.
- 71-503. Contagious, infectious, or other disease or illness; poisoning; duty of attending physician; violation; penalty.
- 71-503.01. Reports required; confidentiality; limitations on use; immunity.
- 71-504. Sexually transmitted diseases; minors; treatment without consent of parent; expenses.
- 71-505. Department of Health and Human Services; public health; duties; fees.
- 71-507. Terms, defined.
- 71-514.02. Health care providers; terms, defined.

(b) ALZHEIMER'S SPECIAL CARE DISCLOSURE ACT

- 71-516.02. Legislative findings and declarations.
- 71-516.03. Alzheimer's special care unit, defined.
- 71-516.04. Facility; disclosures required; department; duties.

(c) METABOLIC DISEASES

- 71-519. Screening test; duties; disease management; duties; fees authorized; immunity from liability.
- 71-520. Food supplement and treatment services program; authorized; fees.
- 71-521. Tests and reports; department; duties.
- 71-522. Central data registry; department; duties; use of data.

- 71-523. Departments; powers and duties; adopt rules and regulations; contracting laboratories; requirements; fees.
 71-524. Enforcement; procedure.

(e) IMMUNIZATION AND VACCINES

- 71-529. Statewide immunization action plan; department; powers.

(f) HUMAN IMMUNODEFICIENCY VIRUS INFECTION

- 71-532. Test results reportable; manner.

(h) EXCHANGE OF IMMUNIZATION INFORMATION

- 71-541. Immunization information; sharing authorized.
 71-543. Rules and regulations.

(i) HEPATITIS C EDUCATION AND PREVENTION ACT

- 71-545. Act, how cited; termination.
 71-546. Hepatitis C Education and Prevention Task Force; created; members.
 71-547. Task force; appointments; research and administrative support.
 71-548. Task force; meetings; expenses.
 71-549. Task force; develop comprehensive strategic plan; contents.
 71-550. Task force; report.

(j) GENETIC TESTS

- 71-551. Physician; genetic tests; written informed consent; requirements; Department of Health and Human Services; duty.

(a) CONTAGIOUS, INFECTIOUS, AND MALIGNANT DISEASES

71-501 Contagious diseases; local public health department; county board of health; powers and duties. (1) The local public health department as defined in section 71-1626 or the county board of a county that has not established or joined in the establishment of a local public health department shall make and enforce regulations to prevent the introduction and spread of contagious, infectious, and malignant diseases in the county or counties under its jurisdiction.

(2) The county board of a county that has not established or joined in the establishment of a local public health department shall establish a county board of health consisting of three members: The sheriff, who shall be chairperson and quarantine officer; a physician who resides permanently in the county, but if the county has no resident physician, then one conveniently situated, who shall be medical adviser, and who shall be chosen by the county board; and the county clerk, who shall be secretary. The county board may pay the chairperson of the county board of health a salary for such services not to exceed fifty dollars per month, as fixed by the county board.

(3) The local public health department or the county board of health shall make rules and regulations to safeguard the health of the people and prevent nuisances and insanitary conditions and shall enforce and provide penalties for the violation of such rules and regulations for the county or counties under its jurisdiction except for incorporated cities and villages. If the local public health department or the county board of health fails to enact such

rules and regulations, it shall enforce the rules and regulations adopted and promulgated by the Department of Health and Human Services.

Source: Laws 1901, c. 49, § 1, p. 403; Laws 1903, c. 62, § 1, p. 358; Laws 1911, c. 79, § 1, p. 328; Laws 1919, c. 55, § 1, p. 159; Laws 1919, c. 190, tit. VI, art. II, div. VIII, § 1, p. 779; Laws 1921, c. 71, § 1, p. 270; C.S.1922, § 8222; C.S.1929, § 71-2301; R.S.1943, § 71-501; Laws 1951, c. 228, § 1, p. 829; Laws 1971, LB 43, § 1; Laws 1996, LB 1044, § 486; Laws 1997, LB 197, § 2; Laws 1999, LB 272, § 23; Laws 2004, LB 1005, § 53; Laws 2007, LB296, § 374.
Operative date July 1, 2007.

Cross Reference

Health districts in counties over 200,000 population, see sections 71-1601 to 71-1625.

71-501.02 Acquired immunodeficiency syndrome program; department; powers. The Department of Health and Human Services may establish and administer a statewide acquired immunodeficiency syndrome program for the purpose of providing education, prevention, detection, and counseling services to protect the public health. In order to implement the program, the department may:

(1) Apply for, receive, and administer federal and other public and private funds and contract for services, equipment, and property as necessary to use such funds for the purposes specified in section 71-501.01 and this section;

(2) Provide education and training regarding acquired immunodeficiency syndrome and its related diseases and conditions to the general public and to health care providers. The department may charge fees based on administrative costs for such services. Any fees collected shall be deposited in the state treasury and shall be credited to the Health and Human Services Cash Fund;

(3) Provide resource referrals for medical care and social services to persons affected by acquired immunodeficiency syndrome and its related diseases and conditions;

(4) Contract or provide for voluntary, anonymous, or confidential screening, testing, and counseling services. All sites providing such services pursuant to a contract with the department shall provide services on an anonymous basis if so requested by the individual seeking such services. The department may charge and permit its contractors to charge an administrative fee or may request donations to defer the cost of the services but shall not deny the services for failure to pay any administrative fee or for failure to make a donation;

(5) Cooperate with the Centers for Disease Control and Prevention of the Public Health Service of the United States Department of Health and Human Services or its successor for the purposes of research into and investigation of acquired immunodeficiency syndrome and its related diseases and conditions; and

(6) To the extent funds are available, offer services that are culturally and language specific upon request to persons identified as having tested positive for the human immunodeficiency virus infection. Such services shall include, but not be limited to, posttest counseling, partner notification, and such early intervention services as case management, behavior modification and support services, laboratory quantification of lymphocyte subsets, immunizations,

Mantoux testing for tuberculosis, prophylactic treatment, and referral for other medical and social services.

Source: Laws 1988, LB 1012, § 2; Laws 1994, LB 819, § 1; Laws 1996, LB 1044, § 487; Laws 2005, LB 301, § 12; Laws 2007, LB296, § 375.
Operative date July 1, 2007.

71-502 Communicable diseases; rules and regulations; control; powers of Department of Health and Human Services. The Department of Health and Human Services shall have supervision and control of all matters relating to necessary communicable disease control and shall adopt and promulgate such proper and reasonable general rules and regulations as will best serve to promote communicable disease control throughout the state and prevent the introduction or spread of disease. In addition to such general and standing rules and regulations, (1) in cases of emergency in which the health of the people of the entire state or any locality in the state is menaced by or exposed to any contagious, infectious, or epidemic disease, illness, or poisoning, (2) when a local board of health having jurisdiction of a particular locality fails or refuses to act with sufficient promptitude and efficiency in any such emergency, or (3) in localities in which no local board of health has been established, as provided by law, the department shall adopt, promulgate, and enforce special communicable disease control rules and regulations such as the occasion and proper protection of the public health may require. All necessary expenses incurred in the enforcement of such rules and regulations shall be paid by the city, village, or county for and within which the same have been incurred. All officers and other persons shall obey and enforce such communicable disease control rules and regulations as may be adopted and promulgated by the department.

Source: Laws 1919, c. 190, tit. VI, art. II, div. VIII, § 2, p. 779; C.S.1922, § 8223; C.S.1929, § 71-2302; R.S.1943, § 71-502; Laws 1977, LB 39, § 149; Laws 1986, LB 763, § 1; Laws 1988, LB 1012, § 3; Laws 1996, LB 1044, § 488; Laws 2007, LB296, § 376.
Operative date July 1, 2007.

71-502.01 Sexually transmitted diseases; enumerated. Sexually transmitted diseases are declared to be contagious, infectious, communicable, and dangerous to the public health. Sexually transmitted diseases shall include, but not be limited to, syphilis, gonorrhea, chancroid, and such other sexually transmitted diseases as the Department of Health and Human Services may from time to time specify.

Source: Laws 1919, c. 190, tit. VI, art. II, div. XVII, § 1, p. 802; C.S.1922, § 8298; C.S.1929, § 71-2901; R.S.1943, (1986), § 71-1101; Laws 1988, LB 1012, § 4; Laws 1996, LB 1044, § 489; Laws 2007, LB296, § 377.
Operative date July 1, 2007.

71-502.02 Sexually transmitted diseases; rules and regulations. The Department of Health and Human Services shall adopt and promulgate such rules and regulations as shall, in its judgment, be necessary to control and suppress sexually transmitted diseases.

Source: Laws 1919, c. 190, tit. VI, art. II, div. XVII, § 2, p. 802; C.S.1922, § 8299; C.S.1929, § 71-2902; R.S.1943, (1986), § 71-1102; Laws 1988, LB 1012, § 5; Laws 1996, LB 1044, § 490; Laws 2007, LB296, § 378.
Operative date July 1, 2007.

71-502.03 Pregnant women; subject to syphilis test; fee. Every physician, or other person authorized by law to practice obstetrics, who is attending a pregnant woman in the state for conditions relating to her pregnancy during the period of gestation or at delivery shall take or cause to be taken a sample of the blood of such woman at the time of the first examination and shall submit such sample to an approved laboratory for a standard serological test for syphilis. Every other person permitted by law to attend pregnant women in the state, but not permitted by law to take blood samples, shall cause such a sample of the blood of such pregnant women to be taken by a physician, duly licensed to practice either medicine and surgery or obstetrics, or other person authorized by law to take such sample of blood and have such sample submitted to an approved laboratory for a standard serological test for syphilis. The results of all such laboratory tests shall be reported to the Department of Health and Human Services on standard forms prescribed and furnished by the department. For the purpose of this section, a standard serological test shall be a test for syphilis approved by the department and shall be made at a laboratory approved to make such tests by the department. Such laboratory tests, as are required by this section, shall be made on request at the Department of Health and Human Services Laboratory. A fee may be established by rule and regulation by the department to defray no more than the actual cost of such tests. Such fee shall be deposited in the state treasury and credited to the Health and Human Services Cash Fund. In reporting every birth and stillbirth, physicians and others required to make such reports shall state on the portion of the certificate entitled For Medical and Health Use Only whether a blood test for syphilis has been made upon a specimen of blood taken from the woman who bore the child for which a birth or stillbirth certificate is filed and the approximate date when the specimen was taken. No birth certificate shall show the result of such test. If no test was made, the reason shall be stated. The department shall provide the necessary clerical, printing, and other expenses in carrying out this section.

Source: Laws 1943, c. 149, § 1, p. 536; R.S.1943, § 71-1116; Laws 1967, c. 447, § 1, p. 1390; Laws 1983, LB 617, § 19; Laws 1986, LB 1047, § 3; R.S.1943, (1986), § 71-1116; Laws 1988, LB 1012, § 6; Laws 1996, LB 1044, § 491; Laws 2007, LB296, § 379.
Operative date July 1, 2007.

71-502.04 Laboratory; test results; notification required. Any person who is in charge of a clinical laboratory in which a laboratory examination of any specimen derived from the human body yields microscopical, cultural, immunological, serological, or other evidence of disease, illness, or poisoning as the Department of Health and Human Services may from time to time specify shall promptly notify the official local health department or the Department of Health and Human Services of such findings.

Each notification shall give the date and result of the test performed, the name and, when available, the age of the person from whom the specimen was obtained, and the name and address of the physician for whom such examination or test was performed. A legible copy of the laboratory report shall be deemed satisfactory notification.

Source: Laws 1967, c. 447, § 2, p. 1391; R.S.1943, (1986), § 71-1117; Laws 1988, LB 1012, § 7; Laws 1992, LB 1019, § 46; Laws 1994, LB 819, § 2; Laws 1996, LB 1044, § 492; Laws 1997, LB 197, § 3; Laws 2007, LB296, § 380.
Operative date July 1, 2007.

71-503 Contagious, infectious, or other disease or illness; poisoning; duty of attending physician; violation; penalty. All attending physicians shall report to the official local health department or the Department of Health and Human Services promptly, upon the discovery thereof, the existence of any contagious or infectious diseases and such other disease, illness, or poisoning as the Department of Health and Human Services may from time to time specify. Any attending physician, knowing of the existence of any such disease, illness, or poisoning, who fails promptly to report the same in accordance with this section, shall be deemed guilty of a Class V misdemeanor for each offense.

Source: Laws 1919, c. 190, tit. VI, art. II, div. VIII, § 3, p. 780; C.S.1922, § 8224; C.S.1929, § 71-2303; R.S.1943, § 71-503; Laws 1967, c. 441, § 1, p. 1381; Laws 1977, LB 39, § 150; Laws 1986, LB 763, § 2; Laws 1996, LB 1044, § 493; Laws 2007, LB296, § 381.
Operative date July 1, 2007.

Cross Reference

Health districts in counties over 200,000 population, see sections 71-1601 to 71-1625.

71-503.01 Reports required; confidentiality; limitations on use; immunity. Whenever any statute of the state, any ordinance or resolution of a municipal corporation or political subdivision enacted pursuant to statute, or any rule or regulation of an administrative agency adopted and promulgated pursuant to statute requires medical practitioners or other persons to report cases of communicable diseases, including sexually transmitted diseases and other reportable diseases, illnesses, or poisonings or to give notification of positive laboratory findings to the Department of Health and Human Services or any county or city board of health, local health department established pursuant to sections 71-1626 to 71-1636, city health department, local health agency, or state or local public official exercising the duties and responsibilities of any board of health or health department, such reports or notifications and the resulting investigations shall be confidential except as provided in this section, shall not be subject to subpoena, and shall be privileged and inadmissible in evidence in any legal proceeding of any kind or character and shall not be disclosed to any other department or agency of the State of Nebraska.

In order to further the protection of public health, such reports and notifications may be disclosed by the Department of Health and Human Services, the official local health department, and the person making such reports or notifications to the Centers for Disease Control and Prevention of the Public Health Service of the United States Department of Health and Human Services or its successor in such a manner as to ensure that the identity of any individual cannot be ascertained. To further protect the public health, the Department of Health and Human Services, the official local health department, and the person making the report or notification may disclose to the official state and local health departments of other states, territories, and the District of Columbia such reports and notifications, including

sufficient identification and information so as to ensure that such investigations as deemed necessary are made.

The appropriate board, health department, agency, or official may: (1) Publish analyses of such reports and information for scientific and public health purposes in such a manner as to ensure that the identity of any individual concerned cannot be ascertained; (2) discuss the report or notification with the attending physician; and (3) make such investigation as deemed necessary.

Any medical practitioner, any official health department, the Department of Health and Human Services, or any other person making such reports or notifications shall be immune from suit for slander or libel or breach of privileged communication based on any statements contained in such reports and notifications.

Source: Laws 1967, c. 441, § 2, p. 1381; Laws 1986, LB 763, § 3; Laws 1988, LB 1012, § 8; Laws 1991, LB 703, § 25; Laws 1994, LB 819, § 3; Laws 1996, LB 1044, § 494; Laws 1997, LB 197, § 4; Laws 2005, LB 301, § 13; Laws 2007, LB296, § 382.
Operative date July 1, 2007.

71-504 Sexually transmitted diseases; minors; treatment without consent of parent; expenses. The chief medical officer as designated in section 81-3115, or local director of health, if a physician, or his or her agent, or any physician, upon consultation by any person as a patient, shall, with the consent of such person who is hereby granted the right of giving such consent, make or cause to be made a diagnostic examination for sexually transmitted diseases and prescribe for and treat such person for sexually transmitted diseases including prophylactic treatment for exposure to sexually transmitted diseases whenever such person is suspected of having a sexually transmitted disease or contact with anyone having a sexually transmitted disease. All such examinations and treatment may be performed without the consent of or notification to the parent, parents, guardian, or any other person having custody of such person. In any such case, the chief medical officer, or local director of health, if a physician, or his or her agent, or the physician shall incur no civil or criminal liability by reason of having made such diagnostic examination or rendered such treatment, but such immunity shall not apply to any negligent acts or omissions. The chief medical officer or local director of health, if a physician, or his or her agent, or the physician shall incur no civil or criminal liability by reason of any adverse reaction to medication administered if reasonable care is taken to elicit from any such person who is under twenty years of age any history of sensitivity or previous adverse reaction to medication. Parents shall be liable for expenses of such treatment to minors under their custody. In the event such person is affected with a sexually transmitted disease, the chief medical officer or local director of health may cause an interview of the person by a sexually transmitted disease investigator to secure the names of sexual contacts so that appropriate investigation can be made in an effort to locate and eliminate sources of infection.

Source: Laws 1972, LB 1096, § 1; R.S.1943, (1986), § 71-1121; Laws 1988, LB 1012, § 9; Laws 1996, LB 1044, § 495; Laws 1997, LB 197, § 5; Laws 2007, LB296, § 383.
Operative date July 1, 2007.

71-505 Department of Health and Human Services; public health; duties; fees. (1)

The Department of Health and Human Services shall secure and maintain in all parts of the state an official record and notification of reportable diseases, illnesses, or poisonings, provide popular literature upon the different branches of public health and distribute the same free throughout the state in a manner best calculated to promote that interest, prepare and exhibit in the different communities of the state public health demonstrations accompanied by lectures and audiovisual aids, provide preventive services to protect the public, and in all other effective ways prevent the origin and spread of disease and promote the public health.

(2) The department may provide technical services to and on behalf of health care providers and may charge fees for such services in an amount sufficient to recover the administrative costs of such services. Such fees shall be paid into the state treasury and credited to the Health and Human Services Cash Fund.

Source: Laws 1919, c. 190, tit. VI, art. II, div. VIII, § 5, p. 781; C.S.1922, § 8226; C.S.1929, § 71-2305; R.S.1943, § 71-505; Laws 1986, LB 763, § 4; Laws 1988, LB 1012, § 10; Laws 1996, LB 1044, § 496; Laws 2005, LB 301, § 14; Laws 2007, LB296, § 384.
Operative date July 1, 2007.

71-507 Terms, defined. For purposes of sections 71-507 to 71-513:

(1) Alternate facility means a facility other than a health care facility that receives a patient transported to the facility by an emergency services provider;

(2) Department means the Department of Health and Human Services;

(3) Designated physician means the physician representing the emergency services provider as identified by name, address, and telephone number on the significant exposure report form. The designated physician shall serve as the contact for notification in the event an emergency services provider believes he or she has had significant exposure to an infectious disease or condition. Each emergency services provider shall designate a physician as provided in subsection (2) of section 71-509;

(4) Emergency services provider means an out-of-hospital emergency care provider licensed pursuant to the Emergency Medical Services Practice Act, a sheriff, a deputy sheriff, a police officer, a state highway patrol officer, a funeral director, a paid or volunteer firefighter, a school district employee, and a person rendering emergency care gratuitously as described in section 25-21,186;

(5) Funeral director means a person licensed under section 38-1414 or an employee of such a person with responsibility for transport or handling of a deceased human;

(6) Funeral establishment means a business licensed under section 38-1419;

(7) Health care facility has the meaning found in sections 71-419, 71-420, 71-424, and 71-429 or any facility that receives patients of emergencies who are transported to the facility by emergency services providers;

(8) Infectious disease or condition means hepatitis B, hepatitis C, meningococcal meningitis, active pulmonary tuberculosis, human immunodeficiency virus, diphtheria, plague, hemorrhagic fevers, rabies, and such other diseases as the department may by rule and regulation specify;

(9) Patient means an individual who is sick, injured, wounded, deceased, or otherwise helpless or incapacitated;

(10) Patient's attending physician means the physician having the primary responsibility for the patient as indicated on the records of a health care facility;

(11) Provider agency means any law enforcement agency, fire department, emergency medical service, funeral establishment, or other entity which employs or directs emergency services providers or public safety officials;

(12) Public safety official means a sheriff, a deputy sheriff, a police officer, a state highway patrol officer, a paid or volunteer firefighter, a school district employee, and any civilian law enforcement employee or volunteer performing his or her duties, other than those as an emergency services provider;

(13) Responsible person means an individual who has been designated by an alternate facility to carry out the facility's responsibilities under sections 71-507 to 71-513. A responsible person may be designated on a case-by-case basis;

(14) Significant exposure means a situation in which the body fluids, including blood, saliva, urine, respiratory secretions, or feces, of a patient or individual have entered the body of an emergency services provider or public safety official through a body opening including the mouth or nose, a mucous membrane, or a break in skin from cuts or abrasions, from a contaminated needlestick or scalpel, from intimate respiratory contact, or through any other situation when the patient's or individual's body fluids may have entered the emergency services provider's or public safety official's body or when an airborne pathogen may have been transmitted from the patient or individual to the emergency services provider or public safety official; and

(15) Significant exposure report form means the form used by the emergency services provider to document information necessary for notification of significant exposure to an infectious disease or condition.

Source: Laws 1989, LB 157, § 1; Laws 1991, LB 244, § 2; Laws 1992, LB 1138, § 20; Laws 1994, LB 1210, § 111; Laws 1996, LB 1044, § 497; Laws 1996, LB 1155, § 27; Laws 1997, LB 138, § 46; Laws 1997, LB 608, § 5; Laws 1999, LB 781, § 1; Laws 2000, LB 819, § 95; Laws 2003, LB 55, § 1; Laws 2006, LB 1115, § 36; Laws 2007, LB296, § 385; Laws 2007, LB463, § 1182.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 385, with LB 463, section 1182, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Emergency Medical Services Practice Act, see section 38-1201.

71-514.02 Health care providers; terms, defined. For purposes of sections 71-514.01 to 71-514.05:

(1) Health care provider means a person who provides care to a patient which is designed to improve the status of his or her health whether this care is rendered in the hospital or community setting and whether the provider is paid or voluntary. Health care provider does not mean an emergency services provider as defined in section 71-507;

(2) Infectious disease or condition means hepatitis B, hepatitis C, meningococcal meningitis, active pulmonary tuberculosis, human immunodeficiency virus, and such other diseases as the Department of Health and Human Services may from time to time specify;

(3) Patient means an individual who is sick, injured, wounded, or otherwise helpless or incapacitated;

(4) Provider agency means any health care facility or agency which is in the business of providing health care services; and

(5) Significant exposure to blood or other body fluid means a specific eye, mouth, other mucous membrane, nonintact skin, or parenteral contact with blood or other materials known to transmit infectious diseases that results from providing care.

Source: Laws 1994, LB 819, § 8; Laws 1996, LB 1044, § 498; Laws 1997, LB 138, § 52; Laws 2003, LB 667, § 6; Laws 2007, LB296, § 386.
Operative date July 1, 2007.

(b) ALZHEIMER'S SPECIAL CARE DISCLOSURE ACT

71-516.02 Legislative findings and declarations. The Legislature finds and declares that:

(1) Certain nursing homes and related facilities and assisted-living facilities claim special care for persons who have Alzheimer's disease, dementia, or a related disorder;

(2) It is in the public interest to provide for the protection of consumers regarding the accuracy and authenticity of such claims; and

(3) The provisions of the Alzheimer's Special Care Disclosure Act are intended to require such facilities to disclose the reasons for those claims, require records of such disclosures to be kept, and require the Department of Health and Human Services to examine the records.

Source: Laws 1994, LB 1210, § 163; Laws 1996, LB 1044, § 499; Laws 1997, LB 608, § 6; Laws 2007, LB296, § 387.
Operative date July 1, 2007.

71-516.03 Alzheimer's special care unit, defined. For the purposes of the Alzheimer's Special Care Disclosure Act, Alzheimer's special care unit shall mean any nursing facility or assisted-living facility, licensed by the Department of Health and Human Services, which secures, segregates, or provides a special program or special unit for residents with a diagnosis of probable Alzheimer's disease, dementia, or a related disorder and which advertises, markets, or otherwise promotes the facility as providing specialized Alzheimer's disease, dementia, or related disorder care services.

Source: Laws 1994, LB 1210, § 164; Laws 1996, LB 1044, § 500; Laws 1997, LB 608, § 7; Laws 2007, LB296, § 388.
Operative date July 1, 2007.

71-516.04 Facility; disclosures required; department; duties. Any facility which offers to provide or provides care for persons with Alzheimer's disease, dementia, or a related disorder by means of an Alzheimer's special care unit shall disclose the form of care or treatment provided that distinguishes such form as being especially applicable to or suitable for such persons. The disclosure shall be made to the Department of Health and Human Services and to any person seeking placement within an Alzheimer's special care unit. The department shall examine all such disclosures in the records of the department as part of the facility's license renewal procedure at the time of licensure or relicensure.

The information disclosed shall explain the additional care provided in each of the following areas:

- (1) The Alzheimer's special care unit's written statement of its overall philosophy and mission which reflects the needs of residents afflicted with Alzheimer's disease, dementia, or a related disorder;
- (2) The process and criteria for placement in, transfer to, or discharge from the unit;
- (3) The process used for assessment and establishment of the plan of care and its implementation, including the method by which the plan of care evolves and is responsive to changes in condition;
- (4) Staff training and continuing education practices;
- (5) The physical environment and design features appropriate to support the functioning of cognitively impaired adult residents;
- (6) The frequency and types of resident activities;
- (7) The involvement of families and the availability of family support programs; and
- (8) The costs of care and any additional fees.

Source: Laws 1994, LB 1210, § 165; Laws 1996, LB 1044, § 501; Laws 2007, LB296, § 389.
Operative date July 1, 2007.

(c) METABOLIC DISEASES

71-519 Screening test; duties; disease management; duties; fees authorized; immunity from liability. (1) All infants born in the State of Nebraska shall be screened for phenylketonuria, primary hypothyroidism, biotinidase deficiency, galactosemia, hemoglobinopathies, medium-chain acyl co-a dehydrogenase (MCAD) deficiency, and such other metabolic diseases as the Department of Health and Human Services may from time to time specify. Confirmatory tests shall be performed if a presumptive positive result on the screening test is obtained.

(2) The attending physician shall collect or cause to be collected the prescribed blood specimen or specimens and shall submit or cause to be submitted the same to the laboratory designated by the department for the performance of such tests within the period and in

the manner prescribed by the department. If a birth is not attended by a physician and the infant does not have a physician, the person registering the birth shall cause such tests to be performed within the period and in the manner prescribed by the department. The laboratory shall within the period and in the manner prescribed by the department perform such tests as are prescribed by the department on the specimen or specimens submitted and report the results of these tests to the physician, if any, the hospital or other birthing facility or other submitter, and the department. The laboratory shall report to the department the results of such tests that are presumptive positive or confirmed positive within the period and in the manner prescribed by the department.

(3) The hospital or other birthing facility shall record the collection of specimens for tests for metabolic diseases and the report of the results of such tests or the absence of such report. For purposes of tracking, monitoring, and referral, the hospital or other birthing facility shall provide from its records, upon the department's request, information about the infant's and mother's location and contact information, and care and treatment of the infant.

(4)(a) The department shall have authority over the use, retention, and disposal of blood specimens and all related information collected in connection with metabolic disease testing conducted under subsection (1) of this section.

(b) The department shall adopt and promulgate rules and regulations relating to the retention and disposal of such specimens. The rules and regulations shall: (i) Be consistent with nationally recognized standards for laboratory accreditation and shall comply with all applicable provisions of federal law; (ii) require that the disposal be conducted in the presence of a witness who may be an individual involved in the disposal or any other individual; and (iii) provide for maintenance of a written or electronic record of the disposal, verified by such witness.

(c) The department shall adopt and promulgate rules and regulations relating to the use of such specimens and related information. Such use shall only be made for public health purposes and shall comply with all applicable provisions of federal law. The department may charge a reasonable fee for evaluating proposals relating to the use of such specimens for public health research and for preparing and supplying specimens for research proposals approved by the department.

(5) The department shall prepare written materials explaining the requirements of this section. The department shall include the following information in the pamphlet:

(a) The nature and purpose of the testing program required under this section, including, but not limited to, a brief description of each condition or disorder listed in subsection (1) of this section;

(b) The purpose and value of the infant's parent, guardian, or person in loco parentis retaining a blood specimen obtained under subsection (6) of this section in a safe place;

(c) The department's procedures for retaining and disposing of blood specimens developed under subsection (4) of this section; and

(d) That the blood specimens taken for purposes of conducting the tests required under subsection (1) of this section may be used for research pursuant to subsection (4) of this section.

(6) In addition to the requirements of subsection (1) of this section, the attending physician or person registering the birth may offer to draw an additional blood specimen from the infant. If such an offer is made, it shall be made to the infant's parent, guardian, or person in loco parentis at the time the blood specimens are drawn for purposes of subsection (1) of this section. If the infant's parent, guardian, or person in loco parentis accepts the offer of an additional blood specimen, the blood specimen shall be preserved in a manner that does not require special storage conditions or techniques, including, but not limited to, lamination. The attending physician or person making the offer shall explain to the parent, guardian, or person in loco parentis at the time the offer is made that the additional blood specimen can be used for future identification purposes and should be kept in a safe place. The attending physician or person making the offer may charge a fee that is not more than the actual cost of obtaining and preserving the additional blood specimen.

(7) The person responsible for causing the tests to be performed under subsection (2) of this section shall inform the parent or legal guardian of the infant of the tests and of the results of the tests and provide, upon any request for further information, at least a copy of the written materials prepared under subsection (5) of this section.

(8) Dietary and therapeutic management of the infant with phenylketonuria, primary hypothyroidism, biotinidase deficiency, galactosemia, hemoglobinopathies, MCAD deficiency, or such other metabolic diseases as the department may from time to time specify shall be the responsibility of the child's parent, guardian, or custodian with the aid of a physician selected by such person.

(9) Except for acts of gross negligence or willful or wanton conduct, any physician, hospital or other birthing facility, laboratory, or other submitter making reports or notifications under sections 71-519 to 71-524 shall be immune from criminal or civil liability of any kind or character based on any statements contained in such reports or notifications.

Source: Laws 1987, LB 385, § 1; Laws 1988, LB 1100, § 99; Laws 1996, LB 1044, § 502; Laws 1998, LB 1073, § 85; Laws 2001, LB 432, § 10; Laws 2002, LB 235, § 1; Laws 2003, LB 119, § 2; Laws 2005, LB 301, § 15; Laws 2007, LB296, § 390.
Operative date July 1, 2007.

71-520 Food supplement and treatment services program; authorized; fees. The Department of Health and Human Services shall establish a program to provide food supplements and treatment services to individuals suffering from the metabolic diseases set forth in section 71-519. To defray or help defray the costs of any program which may be established by the department under this section, the department may prescribe and assess a scale of fees for the food supplements. The maximum prescribed fee for food supplements shall be no more than the actual cost of providing such supplements. No fees may be

charged for formula, and up to two thousand dollars of pharmaceutically manufactured food supplements shall be available to an individual without fees each year.

Source: Laws 1987, LB 385, § 2; Laws 1996, LB 1044, § 503; Laws 1997, LB 610, § 1; Laws 1998, LB 1073, § 86; Laws 2002, LB 235, § 2; Laws 2005, LB 301, § 16; Laws 2007, LB296, § 391.
Operative date July 1, 2007.

71-521 Tests and reports; department; duties. The Department of Health and Human Services shall prescribe the tests, the test methods and techniques, and such reports and reporting procedures as are necessary to implement sections 71-519 to 71-524.

Source: Laws 1987, LB 385, § 3; Laws 1996, LB 1044, § 504; Laws 2002, LB 235, § 3; Laws 2005, LB 301, § 17; Laws 2007, LB296, § 392.
Operative date July 1, 2007.

71-522 Central data registry; department; duties; use of data. The Department of Health and Human Services shall establish and maintain a central data registry for the collection and storage of reported data concerning metabolic diseases. The department shall use reported data to ensure that all infants born in the State of Nebraska are tested for diseases set forth in section 71-519 or by rule and regulation. The department shall also use reported data to evaluate the quality of the statewide system of newborn screening and develop procedures for quality assurance. Reported data in anonymous or statistical form may be made available by the department for purposes of research.

Source: Laws 1987, LB 385, § 4; Laws 1996, LB 1044, § 505; Laws 1998, LB 1073, § 87; Laws 2002, LB 235, § 4; Laws 2005, LB 301, § 18; Laws 2007, LB296, § 393.
Operative date July 1, 2007.

71-523 Departments; powers and duties; adopt rules and regulations; contracting laboratories; requirements; fees. (1) The Department of Health and Human Services shall provide educational and resource services regarding metabolic diseases to persons affected by sections 71-519 to 71-524 and to the public generally.

(2) The Department of Health and Human Services may apply for, receive, and administer assessed fees and federal or other funds which are available for the purpose of implementing sections 71-519 to 71-524 and may contract for or provide services as may be necessary to implement such sections.

(3) The Department of Health and Human Services shall adopt and promulgate rules and regulations to implement sections 71-519 to 71-524.

(4) The Department of Health and Human Services shall contract, following competitive bidding, with a single laboratory to perform tests, report results, set forth the fee the laboratory will charge for testing, and collect and submit fees pursuant to sections 71-519 to 71-524. The department shall require the contracting laboratory to: (a) Perform testing for all of the diseases pursuant to section 71-519 and in accordance with rules and regulations adopted and promulgated pursuant to this section, (b) maintain certification under the federal Clinical Laboratories Improvement Act of 1967, 42 U.S.C. 263a, as such act and section existed on July 20, 2002, (c) participate in appropriate quality assurance proficiency testing programs

offered by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services or other professional laboratory organization, as determined by the Department of Health and Human Services, (d) maintain sufficient contingency arrangements to ensure testing delays of no longer than twenty-four hours in the event of natural disaster or laboratory equipment failure, and (e) charge to the hospital, other birthing facility, or other submitter the fee provided in the contract for laboratory testing costs and the administration fee specified in subsection (5) of this section. The administration fee collected pursuant to such subsection shall be remitted to the Department of Health and Human Services.

(5) The Department of Health and Human Services shall set an administration fee of not more than ten dollars. The department may use the administration fee to pay for the costs of the central data registry, tracking, monitoring, referral, quality assurance, program operation, program development, program evaluation, and treatment services authorized under sections 71-519 to 71-523. The fee shall be collected by the contracting laboratory as provided in subdivision (4)(e) of this section.

(6) Fees collected for the department pursuant to sections 71-519 to 71-523 shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund.

Source: Laws 1987, LB 385, § 5; Laws 1996, LB 1044, § 506; Laws 1997, LB 610, § 2; Laws 1998, LB 1073, § 88; Laws 2002, LB 235, § 5; Laws 2005, LB 301, § 19; Laws 2007, LB296, § 394.
Operative date July 1, 2007.

71-524 Enforcement; procedure. In addition to any other remedies which may be available by law, a civil proceeding to enforce section 71-519 may be brought in the district court of the county where the infant is domiciled or found. The attending physician, the hospital or other birthing facility, the Attorney General, or the county attorney of the county where the infant is domiciled or found may institute such proceedings as are necessary to enforce such section. It shall be the duty of the Attorney General or the county attorney to whom the Department of Health and Human Services reports a violation to cause appropriate proceedings to be initiated without delay. A hearing on any action brought pursuant to this section shall be held within seventy-two hours of the filing of such action, and a decision shall be rendered by the court within twenty-four hours of the close of the hearing.

Source: Laws 1987, LB 385, § 6; Laws 1996, LB 1044, § 507; Laws 2002, LB 235, § 6; Laws 2007, LB296, § 395.
Operative date July 1, 2007.

(e) IMMUNIZATION AND VACCINES

71-529 Statewide immunization action plan; department; powers. The Department of Health and Human Services may participate in the national efforts described in sections 71-527 and 71-528 and may develop a statewide immunization action plan which is comprehensive in scope and reflects contributions from a broad base of providers and

consumers. In order to implement the statewide immunization action plan, the department may:

(1) Actively seek the participation and commitment of the public, health care professionals and facilities, the educational community, and community organizations in a comprehensive program to ensure that the state's children are appropriately immunized;

(2) Apply for and receive public and private awards to purchase vaccines and to administer a statewide comprehensive program;

(3) Provide immunization information and education to the public, parents, health care providers, and educators to establish and maintain a high level of awareness and demand for immunization by parents;

(4) Assist parents, health care providers, and communities in developing systems, including demonstration and pilot projects, which emphasize well-child care and the use of private practitioners and which improve the availability of immunization and improve management of immunization delivery so as to ensure the adequacy of the vaccine delivery system;

(5) Evaluate the effectiveness of these statewide efforts, conduct ongoing measurement of children's immunization status, identify children at special risk for deficiencies in immunization, and report on the activities of the statewide immunization program annually to the Legislature and the citizens of Nebraska;

(6) Recognize persons who volunteer their efforts towards achieving the goal of providing immunization of the children of Nebraska and in meeting the Healthy People 2000 objective of series-complete immunization coverage for ninety percent or more of United States children by their second birthday;

(7) Establish a statewide program to immunize Nebraska children from birth up to six years of age against measles, mumps, rubella, poliomyelitis, diphtheria, pertussis, tetanus, hepatitis B, and haemophilus influenzae type B. The program shall serve children who are not otherwise eligible for childhood immunization coverage with medicaid or other federal funds or are not covered by private third-party payment; and

(8) Contract to provide vaccine under the statewide program authorized under subdivision (7) of this section without cost to health care providers subject to the following conditions:

(a) In order to receive vaccine without cost, health care providers shall not charge for the cost of the vaccine. Health care providers may charge a fee for the administration of the vaccine but may not deny service because of the parent's or guardian's inability to pay such fee. Fees for administration of the vaccine shall be negotiated between the department and the health care provider, shall be uniform among participating providers, and shall be no more than the cost ceiling for the region in which Nebraska is included as set by the Secretary of the United States Department of Health and Human Services for the Vaccines for Children Program authorized by the Omnibus Budget Reconciliation Act of 1993;

(b) Health care providers shall administer vaccines according to the schedule recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention or by the American Academy of Pediatrics unless in the provider's medical

judgment, subject to accepted medical practice, such compliance is medically inappropriate; and

(c) Health care providers shall maintain records on immunizations as prescribed by this section for inspection and audit by the Department of Health and Human Services or the Auditor of Public Accounts, including responses by parents or guardians to simple screening questions related to payment coverage by public or private third-party payors, identification of the administration fee as separate from any other cost charged for other services provided at the same time the vaccination service is provided, and other information as determined by the department to be necessary to comply with subdivision (5) of this section. Such immunization records may also be used for information exchange as provided in sections 71-539 to 71-544.

Source: Laws 1992, LB 431, § 4; Laws 1994, LB 1223, § 32; Laws 1996, LB 1044, § 508; Laws 1998, LB 1063, § 17; Laws 2005, LB 301, § 20; Laws 2007, LB296, § 396.
Operative date July 1, 2007.

(f) HUMAN IMMUNODEFICIENCY VIRUS INFECTION

71-532 Test results reportable; manner. The Department of Health and Human Services shall adopt and promulgate rules and regulations which make the human immunodeficiency virus infection reportable by name in the same manner as communicable diseases under section 71-502.

Source: Laws 1994, LB 819, § 6; Laws 1996, LB 1044, § 510; Laws 2007, LB296, § 397.
Operative date July 1, 2007.

(h) EXCHANGE OF IMMUNIZATION INFORMATION

71-541 Immunization information; sharing authorized. A physician, an advanced practice registered nurse practicing under and in accordance with his or her applicable certification act, a physician assistant, a pharmacist, a licensed health care facility, a public immunization clinic, a local or district health department, and the Department of Health and Human Services may share immunization information which is not restricted under section 71-540. The unrestricted immunization information shared may include, but is not limited to, the patient's name, date of birth, dates and vaccine types administered, and any immunization information obtained from other sources.

Source: Laws 1998, LB 1063, § 13; Laws 2000, LB 1115, § 25; Laws 2005, LB 256, § 34; Laws 2007, LB296, § 398.
Operative date July 1, 2007.

71-543 Rules and regulations. The Department of Health and Human Services may adopt and promulgate rules and regulations to implement sections 71-539 to 71-544, including procedures and methods for access to and security of the immunization information.

Source: Laws 1998, LB 1063, § 15; Laws 2007, LB296, § 399.
Operative date July 1, 2007.

(i) HEPATITIS C EDUCATION AND PREVENTION ACT

71-545 Act, how cited; termination. Sections 71-545 to 71-550 shall be known and may be cited as the Hepatitis C Education and Prevention Act. Sections 71-545 to 71-550 terminate on December 31, 2007.

Source: Laws 2007, LB144, § 1.
Effective date May 17, 2007.

71-546 Hepatitis C Education and Prevention Task Force; created; members. The Hepatitis C Education and Prevention Task Force is created and shall consist of eighteen members, including the chairperson of the Health and Human Services Committee of the Legislature or his or her designated representative and a member of the Legislature appointed by the Executive Board of the Legislative Council and the following members appointed by the Governor:

- (1) A disease prevention and health promotion administrator;
- (2) The state hepatitis coordinator;
- (3) A state surveillance officer;
- (4) A behavioral health specialist;
- (5) A medical provider;
- (6) A representative of the State Department of Education;
- (7) A representative of the Department of Veterans' Affairs;
- (8) A representative of a public health association;
- (9) A representative of a rural health association;
- (10) A registered nurse licensed to practice in Nebraska;
- (11) A pharmacist licensed to practice in Nebraska;
- (12) A primary care physician licensed to practice in Nebraska;
- (13) A primary care nurse practitioner licensed to practice in Nebraska;
- (14) A physician assistant licensed to practice in Nebraska;
- (15) A laboratory professional; and
- (16) A resident of Nebraska affected by hepatitis C.

Source: Laws 2007, LB144, § 2.
Effective date May 17, 2007.

71-547 Task force; appointments; research and administrative support. (1) The appointed members of the Hepatitis C Education and Prevention Task Force shall be appointed within thirty days after May 17, 2007. The chairperson of the Health and Human Services Committee of the Legislature or his or her designated representative shall serve as chairperson of the task force.

(2) The Health and Human Services Committee of the Legislature shall provide research and administrative support for the task force. For budgetary purposes only, the task force shall be within the Legislative Council.

Source: Laws 2007, LB144, § 3.
Effective date May 17, 2007.

71-548 Task force; meetings; expenses. (1) The Hepatitis C Education and Prevention Task Force shall meet at the call of the chairperson of the task force.

(2) Members shall not receive compensation for service on the task force but may be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 2007, LB144, § 4.
Effective date May 17, 2007.

71-549 Task force; develop comprehensive strategic plan; contents. The Hepatitis C Education and Prevention Task Force shall develop a comprehensive strategic plan to address the increasing epidemic of hepatitis C in Nebraska. The plan shall include, but not be limited to:

(1) Development of a proposal to promote public awareness and education about the epidemic of hepatitis C;

(2) Development of educational opportunities targeting health care professionals regarding the epidemic of hepatitis C;

(3) Development of collaborative strategies among state agencies to address the needs of persons at risk for or affected by the epidemic of hepatitis C; and

(4) Evaluation of funding sources available to address the epidemic of hepatitis C.

Source: Laws 2007, LB144, § 5.
Effective date May 17, 2007.

71-550 Task force; report. The Hepatitis C Education and Prevention Task Force shall report on its activities and recommendations for policies and potential legislation to the Governor and to the Health and Human Services Committee of the Legislature on or before December 31, 2007.

Source: Laws 2007, LB144, § 6.
Effective date May 17, 2007.

(j) GENETIC TESTS

71-551 Physician; genetic tests; written informed consent; requirements; Department of Health and Human Services; duty. (1) Except as provided in section 71-519 and except for newborn screening tests ordered by physicians to comply with the law of the state in which the infant was born, a physician or an individual to whom the physician has delegated authority to perform a selected act, task, or function shall not order a predictive genetic test without first obtaining the written informed consent of the patient to be tested. Written informed consent consists of a signed writing executed by the patient or the representative of a patient lacking decisional capacity that confirms that the physician or

individual acting under the delegated authority of the physician has explained, and the patient or his or her representative understands:

- (a) The nature and purpose of the predictive genetic test;
- (b) The effectiveness and limitations of the predictive genetic test;
- (c) The implications of taking the predictive genetic test, including the medical risks and benefits;
- (d) The future uses of the sample taken to conduct the predictive genetic test and the genetic information obtained from the predictive genetic test;
- (e) The meaning of the predictive genetic test results and the procedure for providing notice of the results to the patient; and
- (f) Who will have access to the sample taken to conduct the predictive genetic test and the genetic information obtained from the predictive genetic test, and the patient's right to confidential treatment of the sample and the genetic information.

(2) The Department of Health and Human Services shall develop and distribute a model informed consent form for purposes of this section. The department shall include in the model form all of the information required under subsection (1) of this section. The department shall distribute the model form and all revisions to the form to physicians and other individuals subject to this section upon request and at no charge. The department shall review the model form at least annually for five years after the first model form is distributed and shall revise the model form if necessary to make the form reflect the latest developments in medical genetics. The department may also develop and distribute a pamphlet that provides further explanation of the information included in the model form.

(3) If a patient or his or her representative signs a copy of the model informed consent form developed and distributed under subsection (2) of this section, the physician or individual acting under the delegated authority of the physician shall give the patient a copy of the signed informed consent form and shall include the original signed informed consent form in the patient's medical record.

(4) If a patient or his or her representative signs a copy of the model informed consent form developed and distributed under subsection (2) of this section, the patient is barred from subsequently bringing a civil action for damages against the physician, or an individual to whom the physician delegated authority to perform a selected act, task, or function, who ordered the predictive genetic test, based upon failure to obtain informed consent for the predictive genetic test.

(5) A physician's duty to inform a patient under this section does not require disclosure of information beyond what a physician reasonably well-qualified to order and interpret the predictive genetic test would know. A person acting under the delegated authority of a physician shall understand and be qualified to provide the information required by subsection (1) of this section.

(6) For purposes of this section:

- (a) Genetic information means information about a gene, gene product, or inherited characteristic derived from a genetic test;

(b) Genetic test means the analysis of human DNA, RNA, chromosomes, epigenetic status, and those tissues, proteins, and metabolites used to detect heritable or somatic disease-related genotypes or karyotypes for clinical purposes. Tests of tissues, proteins, and metabolites are included only when generally accepted in the scientific and medical communities as being specifically determinative of a heritable or somatic disease-related genetic condition. Genetic test does not include a routine analysis, including a chemical analysis, of body fluids or tissues unless conducted specifically to determine a heritable or somatic disease-related genetic condition. Genetic test does not include a physical examination or imaging study. Genetic test does not include a procedure performed as a component of biomedical research that is conducted pursuant to federal common rule under 21 C.F.R. parts 50 and 56 and 45 C.F.R. part 46, as such regulations existed on January 1, 2003; and

(c) Predictive genetic test means a genetic test for an otherwise undetectable genotype or karyotype relating to the risk for developing a genetically related disease or disability, the results of which can be used to substitute a patient's prior risk based on population data or family history with a risk based on genotype or karyotype. Predictive genetic test does not include diagnostic testing conducted on a person exhibiting clinical signs or symptoms of a possible genetic condition. Predictive genetic testing does not include prenatal genetic diagnosis, unless the prenatal testing is conducted for an adult-onset condition not expected to cause clinical signs or symptoms before the age of majority.

Source: Laws 2001, LB 432, § 1; Laws 2003, LB 119, § 1; Laws 2005, LB 301, § 10; Laws 2006, LB 994, § 85; R.S.Supp.,2006, § 71-1,104.01; Laws 2007, LB296, § 333; Laws 2007, LB463, § 1183.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

ARTICLE 6

VITAL STATISTICS

Section.

- 71-601.01. Terms, defined.
- 71-602. Department; standard forms; release of information; confidentiality.
 - 71-602.01. Release of information; written agreements authorized.
- 71-604. Birth certificate; preparation and filing.
 - 71-604.01. Birth certificate; sex reassignment; new certificate; procedure.
 - 71-604.05. Birth certificate; restriction on filing; social security number required; exception; use; release of data to Social Security Administration.
- 71-605. Death certificate; cause of death; sudden infant death syndrome; how treated; cremation, disinterment, or transit permits; how executed; filing; requirements.
 - 71-605.01. Death certificate; death in military service outside continental limits of United States; recording.
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- 71-606. Child born dead; death certificate; how registered; duties.

- 71-608.01. Birth and death certificates; local registration; where filed; exemption.
- 71-609. Caskets; sale by retail dealer; record; report.
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- 71-615. Annulments or dissolutions of marriage; monthly reports; duty of clerk of district court; failure; penalty.
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- 71-626. Adoptive birth certificate; adoption decree; court; report of adoption; contents.
- 71-626.01. Adopted person; new birth certificate; conditions; contents; rules and regulations.
- 71-627. Adoptive birth certificates; filing; copies; issuance.
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- 71-627.02. Adoption of foreign-born person; birth certificate; contents.
- 71-628. Children born out of wedlock; birth certificate; issuance; when authorized.
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- 71-640.02. Children born out of wedlock; birth certificate; enter name of father; when.
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- 71-645. Birth defects; findings and duties.
- 71-646. Birth defects; registry; purpose; information released.
- 71-647. Birth defects; department; powers and duties; information released.

71-648. Birth defects; reports.

71-601.01 Terms, defined. For purposes of the Vital Statistics Act:

(1) Abstract of marriage means a certified document that summarizes the facts of marriage, including, but not limited to, the name of the bride and groom, the date of the marriage, the place of the marriage, and the name of the office filing the original marriage license. An abstract of marriage does not include signatures;

(2) Certificate means the record of a vital event;

(3) Certification means the process of recording, filing, amending, or preserving a certificate, which process may be by any means, including, but not limited to, microfilm, electronic, imaging, photographic, typewritten, or other means designated by the department; and

(4) Department means the Department of Health and Human Services.

Source: Laws 1994, LB 886, § 2; Laws 1996, LB 1044, § 512; Laws 2005, LB 301, § 24; Laws 2006, LB 1115, § 38; Laws 2007, LB296, § 400.
Operative date July 1, 2007.

71-602 Department; standard forms; release of information; confidentiality. (1)

The department shall adopt and promulgate rules and regulations prescribing all standard forms for registering with or reporting to the department and for certification to the public of any birth, abortion, marriage, annulment, dissolution of marriage, or death registered in Nebraska. Such forms shall (a) provide for the registration of vital events as accurately as possible, (b) secure information about the economic, educational, occupational, and sociological backgrounds of the individuals involved in the registered events and their parents as a basis for statistical research in order to reduce morbidity and mortality and improve the quality of life, (c) accomplish such duties in a manner which will be uniform with forms for reporting similar events which have been established by the United States Public Health Service to the extent such forms are consistent with state law, and (d) permit other deviations from such forms as will reduce the costs of gathering information, increase efficiency, or protect the health and safety of the people of Nebraska without jeopardizing such uniformity.

(2) All information designated by the department on all certificates as being for health data and statistical research shall be confidential and may be released only to the United States Public Health Service or its successor, government health agencies, or a researcher as approved by the department in accordance with its rules and regulations. The department may publish analyses of any information received on the forms for scientific and public health purposes in such a manner as to assure that the identity of any individual cannot be ascertained. The release of such information pursuant to this section shall not make otherwise confidential information a public record.

Source: Laws 1989, LB 344, § 1; Laws 1992, LB 1019, § 47; Laws 1993, LB 536, § 60; Laws 1996, LB 1044, § 513; Laws 2007, LB296, § 401.
Operative date July 1, 2007.

71-602.01 Release of information; written agreements authorized. All information designated by the department on all certificates as being for health data and statistical research shall be confidential but may be released to the department for research and statistical purposes. The department may release cost, health, and associated health risk information from medicaid records to the department for research and statistical purposes. Such release shall provide for protection of the security of the content of the information, including access limitations, storage of the information, destruction of the information, and use of the information. The release of such information pursuant to this section shall not make otherwise confidential information a public record.

Source: Laws 1993, LB 536, § 61; Laws 1996, LB 1044, § 514; Laws 2007, LB296, § 402.
Operative date July 1, 2007.

71-604 Birth certificate; preparation and filing. (1) A certificate for each live birth which occurs in the State of Nebraska shall be filed on a standard Nebraska certificate form. Such certificate shall be filed with the department within five business days after the birth.

(2) When a birth occurs in an institution or en route thereto, the person in charge of the institution or his or her authorized designee shall obtain the personal data, prepare the certificate which shall include the name, title, and address of the attendant, certify that the child was born alive at the place and time and on the date stated either by standard procedure or by an approved electronic process, and file the certificate. The physician or other person in attendance shall provide the medical information required for the certificate within seventy-two hours after the birth.

(3) When a birth occurs outside an institution, the certificate of birth shall be prepared and filed by one of the following:

- (a) The physician in attendance at or immediately after the birth;
- (b) The father, the mother, or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred; or
- (c) Any other person in attendance at or immediately after the birth.

Source: Laws 1919, c. 190, tit. VI, art. II, div. IX, § 5, p. 781; Laws 1921, c. 253, § 1, p. 863; C.S.1922, § 8232; Laws 1927, c. 166, § 2, p. 448; C.S.1929, § 71-2404; R.S.1943, § 71-604; Laws 1965, c. 418, § 2, p. 1335; Laws 1985, LB 42, § 2; Laws 1989, LB 344, § 9; Laws 1994, LB 886, § 3; Laws 1997, LB 307, § 135; Laws 2007, LB296, § 403.
Operative date July 1, 2007.

71-604.01 Birth certificate; sex reassignment; new certificate; procedure. Upon receipt of a notarized affidavit from the physician that performed sex reassignment surgery on an individual born in this state and a certified copy of an order of a court of competent jurisdiction changing the name of such person, the department shall prepare a new certificate of birth in the new name and sex of such person in substantially the same form as that used for other live births. The evidence from which the new certificate is prepared and the original certificate of birth shall be available for inspection only upon the order of a court of competent jurisdiction.

Source: Laws 1994, LB 886, § 4; Laws 1996, LB 1044, § 515; Laws 2007, LB296, § 404.
Operative date July 1, 2007.

71-604.05 Birth certificate; restriction on filing; social security number required; exception; use; release of data to Social Security Administration. (1) The department shall not file (a) a certificate of live birth, (b) a certificate of delayed birth registration for a registrant who is under twenty-five years of age when an application for such certificate is filed, (c) a certificate of live birth filed after adoption of a Nebraska-born person who is under twenty-five years of age or a person born outside of the jurisdiction of the United States, or (d) a certificate of live birth issued pursuant to section 71-628 unless the social security number or numbers issued to the parents are furnished by the person seeking to register the birth. No such certificate may be amended to show paternity unless the social security number of the father is furnished by the person requesting the amendment. The social security number shall not be required if no social security number has been issued to the parent or if the social security number is unknown.

(2) Social security numbers (a) shall be recorded on the birth certificate but shall not be considered part of the birth certificate and (b) shall only be used for the purpose of enforcement of child support orders in Nebraska as permitted by Title IV-D of the federal Social Security Act, as amended, or as permitted by section 7(a) of the federal Privacy Act of 1974, as amended.

(3) The department may release data to the Social Security Administration which is necessary to obtain a social security number and which is contained on the birth certificate of any individual who has applied for or is receiving medicaid or food stamp benefits. The department shall make such data available only for the purpose of obtaining a social security number for the individual.

(4) The department shall provide to the Social Security Administration each parent's name and social security number collected in the birth certification process as required by the federal Taxpayer Relief Act of 1997.

Source: Laws 1991, LB 703, § 28; Laws 1993, LB 536, § 62; Laws 1996, LB 1044, § 516; Laws 1997, LB 307, § 136; Laws 1998, LB 1073, § 89; Laws 2004, LB 1005, § 55; Laws 2007, LB296, § 405.
Operative date July 1, 2007.

71-605 Death certificate; cause of death; sudden infant death syndrome; how treated; cremation, disinterment, or transit permits; how executed; filing; requirements. (1) The funeral director and embalmer in charge of the funeral of any person dying in the State of Nebraska shall cause a certificate of death to be filled out with all the particulars contained in the standard form adopted and promulgated by the department. Such standard form shall include a space for veteran status and the period of service in the armed forces of the United States and a statement of the cause of death made by a person holding a valid license as a physician who last attended the deceased. The standard form shall also include the deceased's social security number. Death and fetal death certificates shall be

completed by the funeral directors and embalmers and physicians for the purpose of filing with the department and providing child support enforcement information pursuant to section 43-3340.

(2) The physician shall have the responsibility and duty to complete and sign in his or her own handwriting or by electronic means pursuant to section 71-603.01, within twenty-four hours from the time of death, that part of the certificate of death entitled medical certificate of death. In the case of a death when no person licensed as a physician was in attendance, the funeral director and embalmer shall refer the case to the county attorney who shall have the responsibility and duty to complete and sign the death certificate in his or her own handwriting or by electronic means pursuant to section 71-603.01.

No cause of death shall be certified in the case of the sudden and unexpected death of a child between the ages of one week and three years until an autopsy is performed at county expense by a qualified pathologist pursuant to section 23-1824. The parents or guardian shall be notified of the results of the autopsy by their physician, community health official, or county coroner within forty-eight hours. The term sudden infant death syndrome shall be entered on the death certificate as the principal cause of death when the term is appropriately descriptive of the pathology findings and circumstances surrounding the death of a child.

If the circumstances show it possible that death was caused by neglect, violence, or any unlawful means, the case shall be referred to the county attorney for investigation and certification. The county attorney shall, within twenty-four hours after taking charge of the case, state the cause of death as ascertained, giving as far as possible the means or instrument which produced the death. All death certificates shall show clearly the cause, disease, or sequence of causes ending in death. If the cause of death cannot be determined within the period of time stated above, the death certificate shall be filed to establish the fact of death. As soon as possible thereafter, and not more than six weeks later, supplemental information as to the cause, disease, or sequence of causes ending in death shall be filed with the department to complete the record. For all certificates stated in terms that are indefinite, insufficient, or unsatisfactory for classification, inquiry shall be made to the person completing the certificate to secure the necessary information to correct or complete the record.

(3) A completed death certificate shall be filed with the department within five business days after the date of death. If it is impossible to complete the certificate of death within five business days, the funeral director and embalmer shall notify the department of the reason for the delay and file the certificate as soon as possible.

(4) Before any dead human body may be cremated, a cremation permit shall first be signed by the county attorney, or by his or her authorized representative as designated by the county attorney in writing, of the county in which the death occurred on a form prescribed and furnished by the department.

(5) A permit for disinterment shall be required prior to disinterment of a dead human body. The permit shall be issued by the department to a licensed funeral director and embalmer upon proper application. The request for disinterment shall be made by the next of kin of the deceased, as listed in section 38-1425, or a county attorney on a form furnished by the

department. The application shall be signed by the funeral director and embalmer who will be directly supervising the disinterment. When the disinterment occurs, the funeral director and embalmer shall sign the permit giving the date of disinterment and file the permit with the department within ten days of the disinterment.

(6) When a request is made under subsection (5) of this section for the disinterment of more than one dead human body, an order from a court of competent jurisdiction shall be submitted to the department prior to the issuance of a permit for disinterment. The order shall include, but not be limited to, the number of bodies to be disinterred if that number can be ascertained, the method and details of transportation of the disinterred bodies, the place of reinterment, and the reason for disinterment. No sexton or other person in charge of a cemetery shall allow the disinterment of a body without first receiving from the department a disinterment permit properly completed.

(7) No dead human body shall be removed from the state for final disposition without a transit permit issued by the funeral director and embalmer having charge of the body in Nebraska, except that when the death is subject to investigation, the transit permit shall not be issued by the funeral director and embalmer without authorization of the county attorney of the county in which the death occurred. No agent of any transportation company shall allow the shipment of any body without the properly completed transit permit prepared in duplicate.

(8) The interment, disinterment, or reinterment of a dead human body shall be performed under the direct supervision of a licensed funeral director and embalmer, except that hospital disposition may be made of the remains of a child born dead pursuant to section 71-20,121.

(9) All transit permits issued in accordance with the law of the place where the death occurred in a state other than Nebraska shall be signed by the funeral director and embalmer in charge of burial and forwarded to the department within five business days after the interment takes place.

Source: Laws 1921, c. 253, § 2, p. 863; C.S.1922, § 8233; Laws 1927, c. 166, § 3, p. 449; C.S.1929, § 71-2405; R.S.1943, § 71-605; Laws 1949, c. 202, § 1, p. 585; Laws 1953, c. 241, § 1, p. 830; Laws 1961, c. 341, § 3, p. 1091; Laws 1965, c. 418, § 3, p. 1335; Laws 1973, LB 29, § 1; Laws 1978, LB 605, § 1; Laws 1985, LB 42, § 3; Laws 1989, LB 344, § 10; Laws 1993, LB 187, § 8; Laws 1996, LB 1044, § 517; Laws 1997, LB 307, § 137; Laws 1997, LB 752, § 172; Laws 1999, LB 46, § 4; Laws 2003, LB 95, § 33; Laws 2005, LB 54, § 14; Laws 2005, LB 301, § 25; Laws 2007, LB463, § 1184. Operative date December 1, 2008.

Cross Reference

For authority of chiropractors to sign death certificates, see section 38-811.

71-605.01 Death certificate; death in military service outside continental limits of United States; recording. Death certificates issued by or under the authority of the United States for persons who were residents of Nebraska at the time they entered the military or armed forces of the United States, and died while in the service of their country while outside the continental limits of the United States may be recorded with the department.

Source: Laws 1947, c. 233, § 1, p. 739; Laws 1949, c. 203, § 1, p. 588; Laws 1996, LB 1044, § 518; Laws 2007, LB296, § 406.
Operative date July 1, 2007.

71-605.02 Death certificate; death in military service outside continental limits of United States; fees. The department shall preserve permanently and index all such certificates and shall charge and collect in advance the fee prescribed in section 71-612, to be paid by the applicant for each certified copy supplied to the applicant or for any search made at the applicant's request for access to or a certified copy of any record, whether or not the record is found on file with the department. All fees so collected shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund as provided in section 71-612.

Source: Laws 1947, c. 233, § 2, p. 739; Laws 1965, c. 419, § 1, p. 1342; Laws 1967, c. 442, § 1, p. 1382; Laws 1973, LB 583, § 7; Laws 1991, LB 703, § 29; Laws 1992, LB 1019, § 48; Laws 1996, LB 1044, § 519; Laws 2007, LB296, § 407.
Operative date July 1, 2007.

71-606 Child born dead; death certificate; how registered; duties. A child born dead shall be registered as a fetal death on a certificate form furnished by the department. Such certificate shall not be required for a child which has not advanced to the twentieth week of gestation. The certificate shall be filed with the department by the funeral director and embalmer in charge of the funeral and shall include a statement of the cause of death made by a person holding a valid license as a physician who was in attendance. In the event of hospital disposition, as provided in section 71-20,121, the entire certificate shall be completed by the attending physician and subscribed to also by the hospital administrator or his or her designated representative. If the attendant is not a physician, the death shall be referred to the county attorney for certification. The same time limit for completion shall apply as for a regular death certificate.

Source: Laws 1919, c. 190, tit. VI, art. II, div. IX, § 7, p. 782; C.S.1922, § 8237; C.S.1929, § 71-2409; R.S.1943, § 71-606; Laws 1965, c. 418, § 4, p. 1337; Laws 1985, LB 42, § 4; Laws 1989, LB 344, § 11; Laws 1993, LB 187, § 9; Laws 1996, LB 1044, § 520; Laws 1997, LB 307, § 138; Laws 2003, LB 95, § 34; Laws 2007, LB296, § 408.
Operative date July 1, 2007.

71-608.01 Birth and death certificates; local registration; where filed; exemption. Persons in any county containing a city of the metropolitan or primary class which has an established city-county or county health department pursuant to sections 71-1626 to 71-1636 which has an established birth and death registration system shall be exempt from the requirements of direct filing of birth and death certificates required by sections 71-604, 71-605, and 71-606. The certificates for the births and deaths occurring in any such county shall be filed with the vital statistics office of the city-county or county health department within five business days of the date of the birth or death. The city-county or county health department shall forward the certificates to the department within ten business days of the date of the birth or death.

Source: Laws 1985, LB 42, § 6; Laws 1997, LB 307, § 139; Laws 2007, LB296, § 409.
Operative date July 1, 2007.

71-609 Caskets; sale by retail dealer; record; report. Every retail dealer in caskets shall keep a record of sales, which record shall include the name and post office address of the purchaser and the name and date and place of death of the deceased. A report of sales or no sales shall be forwarded to the department on the first day of each month. This requirement shall not apply to persons selling caskets only to dealers or funeral directors and embalmers. Every seller of a casket at retail who does not have charge of the disposition of the body shall enclose within the casket a notice calling attention to the requirements of the law and a blank certificate of death.

Source: Laws 1919, c. 190, tit. VI, art. II, div. IX, § 11, p. 783; C.S.1922, § 8241; Laws 1927, c. 166, § 6, p. 450; C.S.1929, § 71-2413; R.S.1943, § 71-609; Laws 1993, LB 187, § 10; Laws 1996, LB 1044, § 521; Laws 2007, LB296, § 410.
Operative date July 1, 2007.

71-610 Maternity homes; hospitals; birth reports. Maternity homes and lying-in hospitals, and places used as such, shall report to the department on the first day of each month the sex and date of birth of all children born in their respective institutions during the preceding month. The report shall also show the names and addresses of the parents and attending physicians.

Source: Laws 1919, c. 190, tit. VI, art. II, div. IX, § 12, p. 783; C.S.1922, § 8242; Laws 1927, c. 166, § 7, p. 451; C.S.1929, § 71-2414; R.S.1943, § 71-610; Laws 1996, LB 1044, § 522; Laws 2007, LB296, § 411.
Operative date July 1, 2007.

71-611 Department; forms; duty to supply; use of computer-generated forms; authorized. The department shall supply all necessary blanks, forms, and instructions pertaining to the recording of births and deaths to physicians, hospitals, and funeral directors and embalmers. Upon written request, the department may authorize a funeral director and embalmer licensed in Nebraska to use computer-generated death certificate forms on paper supplied by the department which is of the same quality and identical in form established in department regulations for death certificates which are not computer-generated.

Source: Laws 1919, c. 190, tit. VI, art. II, div. IX, § 13, p. 783; C.S.1922, § 8243; Laws 1927, c. 166, § 8, p. 451; C.S.1929, § 71-2415; R.S.1943, § 71-611; Laws 1953, c. 242, § 1, p. 832; Laws 1959, c. 322, § 1, p. 1179; Laws 1985, LB 42, § 5; Laws 1992, LB 1019, § 49; Laws 1993, LB 187, § 11; Laws 1996, LB 1044, § 523; Laws 2007, LB296, § 412.
Operative date July 1, 2007.

71-612 Department; certificates; copies; fees; waiver of fees, when; search of death certificates; fee; access; petty cash fund; authorized. (1) The department, as the State Registrar, shall preserve permanently and index all certificates received. The department shall supply to any applicant for any proper purpose, as defined by rules and regulations of the department, a certified copy of the record of any birth, death, marriage, annulment, or

dissolution of marriage or an abstract of marriage. The department shall supply a copy of a public vital record for viewing purposes at its office upon an application signed by the applicant and upon proof of the identity of the applicant. The application may include the name, address, and telephone number of the applicant, purpose for viewing each record, and other information as may be prescribed by the department by rules and regulations to protect the integrity of vital records and prevent their fraudulent use. Except as provided in subsections (2), (3), (5), (6), and (7) of this section, the department shall be entitled to charge and collect in advance a fee of eleven dollars to be paid by the applicant for each certified copy or abstract of marriage supplied to the applicant or for any search made at the applicant's request for access to or a certified copy of any record or abstract of marriage, whether or not the record or abstract is found on file with the department.

(2) The department shall, free of charge, search for and furnish a certified copy of any record or abstract of marriage on file with the department upon the request of (a) the United States Department of Veterans Affairs or any lawful service organization empowered to represent veterans if the copy of the record or abstract of marriage is to be issued, for the welfare of any member or veteran of the armed forces of the United States or in the interests of any member of his or her family, in connection with a claim growing out of service in the armed forces of the nation or (b) the Military Department.

(3) The department may, free of charge, search for and furnish a certified copy of any record or abstract of marriage on file with the department when in the opinion of the department it would be a hardship for the claimant of old age, survivors, or disability benefits under the federal Social Security Act to pay the fee provided in this section.

(4) A strict account shall be kept of all funds received by the department. Funds received pursuant to subsections (1), (5), (6), and (8) of this section shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. Money credited to the fund pursuant to this section shall be used for the purpose of administering the laws relating to vital statistics and may be used to create a petty cash fund administered by the department to facilitate the payment of refunds to individuals who apply for copies or abstracts of records. The petty cash fund shall be subject to section 81-104.01, except that the amount in the petty cash fund shall not be less than twenty-five dollars nor more than one thousand dollars.

(5) The department shall, upon request, conduct a search of death certificates for stated individuals for the Nebraska Medical Association or any of its allied medical societies or any inhospital staff committee pursuant to sections 71-3401 to 71-3403. If such death certificate is found, the department shall provide a noncertified copy. The department shall charge a fee for each search or copy sufficient to cover its actual direct costs, except that the fee shall not exceed two dollars per individual search or copy requested.

(6) The department may permit use of data from vital records for statistical or research purposes under section 71-602 or disclose data from certificates or records to federal, state, county, or municipal agencies of government for use in administration of their official duties and charge and collect a fee that will recover the department's cost of production of the data. The department may provide access to public vital records for viewing purposes by electronic

means, if available, under security provisions which shall assure the integrity and security of the records and data base and shall charge and collect a fee that shall recover the department's costs.

(7) In addition to the fees charged under subsection (1) of this section, the department shall charge and collect an additional fee of one dollar for any certified copy of the record of any birth or for any search made at the applicant's request for access to or a certified copy of any such record, whether or not the record is found on file with the department. Any county containing a city of the metropolitan class which has an established city-county or county health department pursuant to sections 71-1626 to 71-1636 which has an established system of registering births and deaths shall charge and collect in advance a fee of one dollar for any certified copy of the record of any birth or for any search made at the applicant's request for such record, whether or not the record is found on file with the county. All fees collected under this subsection shall be remitted to the State Treasurer for credit to the Nebraska Child Abuse Prevention Fund.

(8) The department shall not charge other state agencies the fees authorized under subsections (1) and (7) of this section for automated review of any certificates or abstracts of marriage. The department shall charge and collect a fee from other state agencies for such automated review that will recover the department's cost.

Source: Laws 1919, c. 190, tit. VI, art. II, div. IX, § 14, p. 784; Laws 1921, c. 73, § 1, p. 272; C.S.1922, § 8244; Laws 1927, c. 166, § 9, p. 451; C.S.1929, § 71-2416; Laws 1941, c. 140, § 10, p. 554; C.S.Supp.,1941, § 71-2416; Laws 1943, c. 147, § 1, p. 532; R.S.1943, § 71-612; Laws 1951, c. 229, § 1, p. 830; Laws 1959, c. 323, § 1, p. 1180; Laws 1963, c. 410, § 1, p. 1330; Laws 1965, c. 418, § 6, p. 1338; Laws 1965, c. 419, § 2, p. 1342; Laws 1973, LB 583, § 8; Laws 1983, LB 617, § 14; Laws 1985, LB 42, § 7; Laws 1986, LB 333, § 9; Laws 1989, LB 344, § 12; Laws 1991, LB 703, § 30; Laws 1992, LB 1019, § 50; Laws 1993, LB 536, § 63; Laws 1995, LB 406, § 32; Laws 1996, LB 1044, § 524; Laws 1997, LB 307, § 140; Laws 2002, Second Spec. Sess., LB 48, § 3; Laws 2004, LB 1005, § 56; Laws 2006, LB 994, § 86; Laws 2006, LB 1115, § 39; Laws 2007, LB296, § 413. Operative date July 1, 2007.

71-614 Marriage licenses; monthly reports; county clerk; duties; failure; penalty. (1) On or before the fifth day of each month, the county clerk of each county shall return to the department upon suitable blank forms, to be provided by the department, a statement of all marriages recorded by him or her during the preceding calendar month. If no marriages were performed in the county during the preceding month, a card furnished by the department indicating such information shall be submitted on or before the fifth day of each month to the department. Upon neglect or refusal to make such returns, such county clerk shall, for each such neglect or refusal, forfeit and pay the sum of twenty-five dollars for the use of the proper county, to be collected as debts of like amount are now collectible.

(2) As soon as possible after completion of an amendment to a marriage license by the department, the department shall forward a noncertified copy of the marriage license reflecting the amendment to the county clerk of the county in which the license was filed. Upon receipt of the amended copy, the county clerk shall make the necessary changes on the marriage license on file in his or her office to reflect the amendment.

Source: Laws 1919, c. 190, tit. VI, art. II, div. IX, § 16, p. 784; C.S.1922, § 8246; Laws 1927, c. 166, § 10, p. 452; C.S.1929, § 71-2418; R.S.1943, § 71-614; Laws 1959, c. 323, § 2, p. 1180; Laws 1967, c. 443, § 1, p. 1383; Laws 1967, c. 444, § 1, p. 1385; Laws 1977, LB 73, § 1; Laws 1986, LB 525, § 13; Laws 1992, LB 1019, § 53; Laws 1996, LB 1044, § 525; Laws 1997, LB 307, § 141; Laws 2007, LB296, § 414.
Operative date July 1, 2007.

71-615 Annulments or dissolutions of marriage; monthly reports; duty of clerk of district court; failure; penalty. On or before the fifth day of each month, the clerk of the district court of each county shall make and return to the department, upon suitable forms furnished by the department, a statement of each action for annulment or dissolution of marriage granted in the court of which he or she is clerk during the preceding calendar month. The information shall be furnished by the petitioner or his or her legal representative and presented to the clerk of the court with the petition. In all cases, the furnishing of the information to complete the record shall be a prerequisite to the granting of the final decree. If no annulments or dissolutions of marriage were granted in the county during the preceding month, a card furnished by the department indicating such information shall be submitted on or before the fifth day of each month to the department. Upon neglect or refusal to make such return, such clerk shall, for each neglect or refusal, forfeit and pay the sum of twenty-five dollars for the use of the county.

Source: Laws 1919, c. 190, tit. VI, art. II, div. IX, § 18, p. 785; C.S.1922, § 8248; Laws 1927, c. 166, § 11, p. 452; C.S.1929, § 71-2419; R.S.1943, § 71-615; Laws 1959, c. 323, § 3, p. 1181; Laws 1967, c. 443, § 2, p. 1384; Laws 1967, c. 444, § 2, p. 1386; Laws 1977, LB 73, § 2; Laws 1989, LB 344, § 13; Laws 1996, LB 1044, § 526; Laws 1996, LB 1296, § 28; Laws 1997, LB 229, § 40; Laws 2007, LB296, § 415.
Operative date July 1, 2007.

71-616 Reports; department to tabulate. The department shall preserve permanently and index all births, deaths, marriages, and divorces received, and shall tabulate statistics therefrom.

Source: Laws 1919, c. 190, tit. VI, art. II, div. IX, § 19, p. 785; C.S.1922, § 8249; Laws 1927, c. 166, § 12, p. 453; C.S.1929, § 71-2420; R.S.1943, § 71-616; Laws 1996, LB 1044, § 527; Laws 2007, LB296, § 416.
Operative date July 1, 2007.

71-616.03 Filing and issuing vital records; additional methods authorized. The department may accept for filing and issue certified copies of vital records generated from microfilm, imaging, electronic means, or any other medium as designated by the department.

Source: Laws 1994, LB 886, § 5; Laws 1996, LB 1044, § 528; Laws 2007, LB296, § 417.
Operative date July 1, 2007.

71-616.04 Preservation of vital records; methods authorized. To preserve vital records, the department may prepare typewritten, photographic, electronic, or other reproductions of certificates or reports of vital records. Such reproductions, when verified and approved by the department, shall be accepted as the original records, and the documents

from which permanent reproductions have been made may be disposed of as provided by rules and regulations of the department.

Source: Laws 1994, LB 886, § 6; Laws 1996, LB 1044, § 529; Laws 1997, LB 307, § 142; Laws 2007, LB296, § 418.
Operative date July 1, 2007.

71-617.02 Delayed birth registration; application; fee; certificate registered; documentary evidence, defined. A notarized application may be filed with the department for a delayed registration of birth of any person born in the State of Nebraska whose birth is not registered within one year after the date of birth. If the birth occurred in the State of Nebraska at any time since the commencement in 1905 of mandatory registration under the laws of Nebraska, the applicant shall pay the statutory file search fee prescribed by section 71-612 to determine that such birth is not recorded. The certificate shall be registered based upon documentary evidence furnished to substantiate the alleged facts of birth. As used in the Delayed Birth Registration Act, unless the context otherwise requires, documentary evidence shall mean independent records each of which was created for a different purpose.

Source: Laws 1985, LB 42, § 9; Laws 1997, LB 307, § 144; Laws 2007, LB296, § 419.
Operative date July 1, 2007.

71-617.06 Delayed birth certificate; independent supporting records; enumerated. Independent supporting records shall include, but not be limited to, original records or certified or notarized copies of:

- (1) A recorded certificate of baptism performed under age four;
- (2) An insurance policy application personal history sheet;
- (3) A federal census record;
- (4) A school census record;
- (5) A military service record;
- (6) A family Bible record when proved beyond a reasonable doubt that the record was made before the child reached age four;
- (7) Other evidence on file in the department taken from other registrations;
- (8) A record at least five years old or established within seven years of the date of birth such as a physician's certificate or an affidavit taken from physician, hospital, nursing, or clinic records;
- (9) An affidavit from a parent or longtime acquaintance;
- (10) A printed notice of birth;
- (11) A record from a birthday or baby book;
- (12) A school record; or
- (13) A church record.

An affidavit shall include the full name of the person whose birth is being registered as well as the date and place of birth and the basis of the affiant's knowledge of these facts.

Source: Laws 1985, LB 42, § 13; Laws 1997, LB 307, § 145; Laws 2007, LB296, § 420.
Operative date July 1, 2007.

71-617.07 Refusal to issue delayed birth certificate; reasons; appeal. If an applicant for a certificate of delayed birth registration fails to submit the minimum documentation required for the delayed registration or if the department has reasonable cause to question the validity or adequacy of either the applicant's sworn statement or the documentary evidence due to conflicting evidence submitted and if the deficiencies are not corrected, the department shall not issue and register a delayed certificate of birth and shall advise the applicant of the reasons for such action. The department shall further advise the applicant of his or her right of appeal to the department and then, if not satisfied, to the county court as provided in section 71-617.08.

Source: Laws 1985, LB 42, § 14; Laws 1996, LB 1044, § 531; Laws 1997, LB 307, § 146; Laws 2007, LB296, § 421.
Operative date July 1, 2007.

71-617.08 Delayed birth certificate; denial; appeal; procedure. (1) If a delayed certificate of birth is denied by the department, a petition signed and sworn to by the petitioner may be filed with the county court of Lancaster County, of the county of the petitioner's residence, or of the county in which the birth is claimed to have occurred.

(2) The petition shall be made on a form prescribed and furnished by the department and shall allege:

- (a) That the person for whom a delayed certificate of birth is sought was born in this state;
- (b) That no certificate of birth of such person can be found in the files or records of the department;
- (c) That diligent efforts by the petitioner have failed to obtain evidence required by sections 71-617.05 and 71-617.06 that is considered acceptable by the department;
- (d) That the department has refused to register a delayed certificate of birth; and
- (e) Such other allegations as may be required.

Source: Laws 1985, LB 42, § 15; Laws 1996, LB 1044, § 532; Laws 1997, LB 307, § 147; Laws 2007, LB296, § 422.
Operative date July 1, 2007.

71-617.09 Delayed birth certificate; petition; accompanying documents. A statement of the department indicating why a delayed certificate of birth was not issued and registered and all documentary evidence which was submitted to the department in support of such registration shall accompany a petition filed under section 71-617.08.

Source: Laws 1985, LB 42, § 16; Laws 1996, LB 1044, § 533; Laws 1997, LB 307, § 148; Laws 2007, LB296, § 423.
Operative date July 1, 2007.

71-617.10 Delayed birth certificate; hearing; notice; witnesses. The court shall fix a time and place for a hearing upon a petition filed under section 71-617.08 and shall give

the department ten calendar days' notice of such hearing. Authorized representatives of the department may appear and testify in the proceeding.

Source: Laws 1985, LB 42, § 17; Laws 1996, LB 1044, § 534; Laws 1997, LB 307, § 149; Laws 2007, LB296, § 424.
Operative date July 1, 2007.

71-617.11 Delayed birth certificate; hearing; findings; order; contents. If the court finds from the evidence presented that the person for whom a delayed certificate of birth is sought was born in this state, it shall make findings as to the place and date of birth, parentage, and such other findings as the case may require and shall issue an order on a form prescribed and furnished by the department to establish a certificate of birth. The order shall include the birth data to be registered, a description of the evidence presented, and the date of the court's action.

Source: Laws 1985, LB 42, § 18; Laws 1997, LB 307, § 150; Laws 2007, LB296, § 425.
Operative date July 1, 2007.

71-617.12 Delayed birth certificate; court order; clerk of the court; duties. The clerk of the court shall forward any order made under section 71-617.11 to the department not later than the tenth day of the calendar month following the month in which it was entered. The order shall be registered by the department and shall constitute the certificate of birth.

Source: Laws 1985, LB 42, § 19; Laws 1997, LB 307, § 151; Laws 2007, LB296, § 426.
Operative date July 1, 2007.

71-617.13 Delayed birth certificate; department; duties. The department shall certify on a delayed registration of birth that no other record of the birth is on file with the department.

Source: Laws 1985, LB 42, § 20; Laws 1997, LB 307, § 152; Laws 2007, LB296, § 427.
Operative date July 1, 2007.

71-617.15 Delayed birth certificate; fees. (1) The department shall charge and collect the same fee as prescribed in subsection (1) of section 71-612 when an application for a delayed birth certificate is filed. All such fees shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. The department shall collect an additional fee of one dollar when a delayed birth certificate is issued. All amounts collected from such additional fee shall be remitted to the State Treasurer for credit to the Nebraska Child Abuse Prevention Fund.

(2) Upon request and payment of the fees required by section 71-612, a certified copy of a delayed birth certificate shall be furnished by the department. All fees for a certified copy shall be handled as provided in section 71-612.

Source: Laws 1985, LB 42, § 22; Laws 1986, LB 333, § 10; Laws 1991, LB 703, § 31; Laws 1992, LB 1019, § 54; Laws 1995, LB 406, § 33; Laws 1996, LB 1044, § 535; Laws 1997, LB 307, § 154; Laws 2002, Second Spec. Sess., LB 48, § 4; Laws 2004, LB 1005, § 58; Laws 2006, LB 994, § 87; Laws 2007, LB296, § 428.
Operative date July 1, 2007.

71-626 Adoptive birth certificate; adoption decree; court; report of adoption; contents. (1) For each adoption of a Nebraska-born or foreign-born person decreed by any court of this state, the court shall require the preparation of a report of adoption on a form prescribed and furnished by the department. The report shall (a) include the original name, date, and place of birth and the name of the parent or parents of such person; (b) provide information necessary to establish a new certificate of birth of the person adopted; (c) provide the name and address of the child placement agency, if any, which placed the child for adoption; and (d) identify the decree of adoption and be certified by the clerk of the court.

(2) Information in the possession of the petitioner necessary to prepare the report of adoption shall be furnished with the petition for adoption by each petitioner or his or her attorney. The social or welfare agency or other person concerned shall supply the court with such additional information in his or her possession as may be necessary to complete the report. The supplying of such information shall be a prerequisite to the issuance of a decree.

(3) Whenever an adoption decree is amended or set aside, the clerk of the court shall prepare a report thereof, which shall include such facts as are necessary to identify the original adoption report and the facts amended in the adoption decree as shall be necessary to properly amend the birth record.

(4) Not later than the tenth day after the decree has been entered, the clerk of such court shall forward the report to the department whenever an adoptive birth certificate is to be filed or has already been filed.

Source: Laws 1941, c. 143, § 1, p. 571; C.S.Supp.,1941, § 43-113; R.S.1943, § 71-626; Laws 1945, c. 168, § 1, p. 540; Laws 1959, c. 323, § 5, p. 1182; Laws 1961, c. 342, § 1, p. 1093; Laws 1965, c. 418, § 9, p. 1339; Laws 1971, LB 246, § 1; Laws 1980, LB 681, § 2; Laws 1980, LB 992, § 30; Laws 1996, LB 1044, § 536; Laws 1997, LB 307, § 155; Laws 2007, LB296, § 429.
Operative date July 1, 2007.

Cross Reference

For proceedings for adoption of children, see Chapter 43, article 1.

71-626.01 Adopted person; new birth certificate; conditions; contents; rules and regulations. (1) The department shall establish a new certificate of birth for a person born in the State of Nebraska whenever it receives any of the following:

(a) A report of adoption as provided in section 71-626 on a form supplied by the department or a certified copy of the decree of adoption together with the information required in such report, except that a new certificate of birth shall not be established if so requested in writing by the court decreeing the adoption, the adoptive parents, or the adopted person; or

(b) A report of adoption or a certified copy of the decree of adoption entered in a court of competent jurisdiction of any other state or nation declaring adopted a person born in the State of Nebraska, together with the information necessary to identify the original certificate

of birth and to establish the new certificate of birth, except that a new certificate of birth shall not be established when so requested by the court decreeing the adoption, the adoptive parents, or the adopted person.

(2) The new certificate of birth for a person born in the State of Nebraska shall be on the form in use at the time of its preparation and shall include the following items in addition to such other information as may be necessary to complete the form:

- (a) The adoptive name of the person;
- (b) The names and personal particulars of the adoptive parents;
- (c) The date and place of birth as transcribed from the original certificate;
- (d) The name of the attendant, printed or typed;
- (e) The same birth number as was assigned to the original certificate; and
- (f) The original filing date.

The data necessary to locate the existing certificate and the data necessary to complete the new certificate shall be submitted to the department.

(3) When an adoptive certificate of birth is established, the actual place of birth and date of birth shall be shown. It shall be substituted for the original certificate of birth. Thereafter, the original certificate and the evidence of adoption shall not be subject to inspection except (a) upon order of a court of competent jurisdiction, (b) as provided in sections 43-138 to 43-140, (c) as provided in sections 43-146.11 to 43-146.13, or (d) as provided by rules and regulations of the department. Upon receipt of notice that an adoption has been set aside, the original certificate of birth shall be restored to its place in the files and the new certificate and evidence shall not be subject to inspection except upon order of a court of competent jurisdiction.

(4) Whenever a new certificate of birth is established by the department, all copies of the original certificate of birth in the custody of any custodian of permanent local records in this state shall be sealed from inspection.

(5) The department may adopt and promulgate such rules and regulations as are necessary and proper to assist it in the implementation and administration of section 71-626 and this section.

Source: Laws 1971, LB 246, § 2; Laws 1980, LB 992, § 31; Laws 1988, LB 372, § 24; Laws 1996, LB 1044, § 537; Laws 1997, LB 307, § 156; Laws 2007, LB296, § 430.
Operative date July 1, 2007.

71-627 Adoptive birth certificates; filing; copies; issuance. (1) The certificate of birth of adopted children shall be filed as other certificates of birth. The department shall charge and collect the same fee as prescribed in subsection (1) of section 71-612 for each certificate filed. All such fees shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. The department shall charge and collect an additional fee of one dollar for each certificate issued. All amounts collected from such additional fee shall be remitted to the State Treasurer for credit to the Nebraska Child Abuse Prevention Fund.

(2) Upon request and payment of the fees required by section 71-612, a certified copy of an adoptive birth certificate shall be furnished by the department. All fees for a certified copy shall be handled as provided in section 71-612.

Source: Laws 1941, c. 143, § 2, p. 572; C.S.Supp.,1941, § 43-114; R.S.1943, § 71-627; Laws 1953, c. 243, § 1, p. 833; Laws 1959, c. 323, § 6, p. 1183; Laws 1961, c. 342, § 2, p. 1094; Laws 1965, c. 418, § 10, p. 1340; Laws 1965, c. 419, § 4, p. 1343; Laws 1971, LB 246, § 3; Laws 1973, LB 583, § 10; Laws 1983, LB 617, § 16; Laws 1986, LB 333, § 11; Laws 1991, LB 703, § 32; Laws 1992, LB 1019, § 55; Laws 1995, LB 406, § 34; Laws 1996, LB 1044, § 538; Laws 1997, LB 307, § 157; Laws 2002, Second Spec. Sess., LB 48, § 5; Laws 2004, LB 1005, § 59; Laws 2006, LB 994, § 88; Laws 2007, LB296, § 431.
Operative date July 1, 2007.

71-627.01 Adoptive birth certificate; decree of adoption of child born in another state; notice of entry of decree. Whenever a decree of adoption is entered in any court of competent jurisdiction in the State of Nebraska, as to a child born in another state, the judge of the court in which such decree is entered shall, on forms to be furnished by the department, notify the agency having authority to issue adoptive birth certificates in the state in which such child was born for the purpose of securing the issuance of an adoptive birth certificate from the state of birth.

Source: Laws 1961, c. 342, § 3, p. 1094; Laws 1996, LB 1044, § 539; Laws 1997, LB 307, § 158; Laws 2007, LB296, § 432.
Operative date July 1, 2007.

71-627.02 Adoption of foreign-born person; birth certificate; contents. Upon receipt of a Report of Adoption or a certified copy of a decree of adoption issued by any court of competent jurisdiction in the State of Nebraska as to any foreign-born person, the department shall prepare a birth certificate in the new name of the adopted person. The birth certificate shall show specifically (1) the new name of the adopted person, (2) the date of birth and sex of the adopted person, (3) statistical information concerning the adoptive parents in place of the natural parents, and (4) the true or probable place of birth including the city or town and country.

Source: Laws 1961, c. 342, § 4, p. 1094; Laws 1980, LB 681, § 3; Laws 1980, LB 992, § 32; Laws 1994, LB 886, § 7; Laws 1996, LB 1044, § 540; Laws 1997, LB 307, § 159; Laws 2007, LB296, § 433.
Operative date July 1, 2007.

71-628 Children born out of wedlock; birth certificate; issuance; when authorized. In case of the legitimation of any child born in Nebraska by the subsequent marriage of such child's parents as provided in section 43-1406, the department, upon the receipt of a certified copy of the marriage certificate or abstract of marriage of the parents and a statement of the parents acknowledging paternity, shall prepare a new certificate of birth in the new name of the child so legitimated, in substantially the same form as that used for other live births. The department shall charge and collect the same fee as prescribed in subsection (1) of section 71-612. All such fees shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. The department shall charge and collect an additional fee of one dollar for each new certificate of birth filed. All amounts collected

from such additional fee shall be remitted to the State Treasurer for credit to the Nebraska Child Abuse Prevention Fund.

Source: Laws 1945, c. 173, § 1, p. 552; Laws 1959, c. 323, § 7, p. 1183; Laws 1983, LB 617, § 17; Laws 1986, LB 333, § 12; Laws 1992, LB 1019, § 56; Laws 1994, LB 886, § 8; Laws 1994, LB 1224, § 83; Laws 1995, LB 406, § 35; Laws 1997, LB 307, § 160; Laws 2002, Second Spec. Sess., LB 48, § 6; Laws 2004, LB 1005, § 60; Laws 2006, LB 994, § 89; Laws 2006, LB 1115, § 40; Laws 2007, LB296, § 434.
Operative date July 1, 2007.

71-629 Children born out of wedlock; legitimized; birth certificate; copies; issuance; inspection; when authorized. A certified copy or copies of the certificate of birth of any such legitimized child may be furnished upon request by the department. The evidence upon which the new certificate is made may be furnished upon request to a parent of such legitimized child or to the legitimized child if such child is nineteen years of age or older. The evidence upon which the new certificate is made shall be available for inspection by any other person only upon the order of a court of competent jurisdiction, and the original certificate of birth shall be available for inspection only upon the order of a court of competent jurisdiction.

Source: Laws 1945, c. 173, § 2, p. 553; Laws 1996, LB 1044, § 541; Laws 1997, LB 307, § 161; Laws 2007, LB185, § 4; Laws 2007, LB296, § 435.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 185, section 4, with LB 296, section 435, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 185 became operative September 1, 2007.

71-630 Birth or death certificate; erroneous or incomplete; correction; department; duties. (1) A birth or death certificate filed with the department may be amended only in accordance with this section and sections 71-635 to 71-644 and rules and regulations adopted pursuant thereto by the department as necessary and proper to protect the integrity and accuracy of records of vital statistics.

(2) A certificate that is amended under this section shall have a properly dated reference placed on the face of the certificate and state that it is amended, except as provided in subsection (4) of this section.

(3) Upon receipt of a certified copy of a court order changing the name of a person born in this state and upon request of such person or his or her parent, guardian, or legal representative, the department shall amend the certificate of birth to reflect the change in name.

(4) Upon request and receipt of a sworn acknowledgment of paternity of a child born out of wedlock signed by both parents, the department shall amend the certificate of birth to show such paternity if paternity is not shown on the birth certificate. Such certificate shall not be marked amended.

Source: Laws 1947, c. 234, § 1, p. 740; Laws 1959, c. 323, § 8, p. 1183; Laws 1971, LB 245, § 1; Laws 1996, LB 1044, § 542; Laws 1997, LB 307, § 162; Laws 2007, LB296, § 436.
Operative date July 1, 2007.

71-634 Birth or death certificate; correction. The department shall charge and collect the same fee as prescribed in subsection (1) of section 71-612 for each proceeding under sections 71-630 and 71-635 to 71-644. All fees so collected shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. The department shall collect the fees required by section 71-612 for a certified copy of the amended record. All fees for a certified copy shall be handled as provided in section 71-612.

If a certificate is amended pursuant to sections 71-630 and 71-635 to 71-644 as the result of an error committed by the department in the issuance of such certificate, the department may waive any fee required under this section.

Source: Laws 1947, c. 234, § 5, p. 741; Laws 1953, c. 244, § 1, p. 834; Laws 1959, c. 323, § 9, p. 1184; Laws 1965, c. 418, § 11, p. 1340; Laws 1965, c. 419, § 5, p. 1344; Laws 1971, LB 245, § 2; Laws 1973, LB 483, § 11; Laws 1978, LB 671, § 1; Laws 1983, LB 617, § 18; Laws 1991, LB 703, § 33; Laws 1992, LB 1019, § 57; Laws 1995, LB 406, § 36; Laws 1996, LB 1044, § 543; Laws 2001, LB 209, § 18; Laws 2004, LB 1005, § 61; Laws 2006, LB 994, § 90; Laws 2007, LB296, § 437. Operative date July 1, 2007.

71-636 Birth certificates; amendments. Amendment of obvious errors, of transposition of letters in words of common knowledge, or of omissions on birth certificates may be made by the department within the first year after the date of the birth, either upon its own observation, upon query, or upon request of a person with a direct and tangible interest in the certificate. When such additions or minor amendments are made by the department, a notation as to the source of the information together with the date the change was made and the initials of the authorized agent making the change shall be made on the reverse side of the certificate in such a way as not to become a part of the certificate. The certificate shall not be marked amended.

Source: Laws 1971, LB 245, § 3; Laws 1985, LB 42, § 23; Laws 1992, LB 1019, § 58; Laws 1997, LB 307, § 163; Laws 2007, LB296, § 438. Operative date July 1, 2007.

71-639 Birth or death certificate; amendments; evaluation of evidence. The department shall evaluate all evidence submitted for amendments to vital records and when it finds reason to question its validity or adequacy it may reject the amendment and shall advise the applicant of the reasons for this action.

Source: Laws 1971, LB 245, § 6; Laws 1997, LB 307, § 164; Laws 2007, LB296, § 439. Operative date July 1, 2007.

71-640.02 Children born out of wedlock; birth certificate; enter name of father; when. The department shall enter on the birth certificate of any child born out of wedlock the name of the father of the child upon receipt of (1) a certified copy of a court order showing that paternity has been established or a statement in writing by the father that he is the father of the child and (2) the written request of (a) the parent having legal custody of the child or (b) the guardian or agency having legal custody of the child. The surname of the child shall be determined in accordance with section 71-640.03.

Source: Laws 1978, LB 671, § 2; Laws 1994, LB 886, § 10; Laws 1997, LB 307, § 165; Laws 2007, LB296, § 440.
Operative date July 1, 2007.

71-640.03 Birth certificate; surname of child. (1) In any case in which paternity of a child is determined by a court of competent jurisdiction, the surname of the child may be entered on the record the same as the surname of the father.

(2) The surname of the child shall be the parents' prerogative, except that the department shall not accept a birth certificate with a child's surname that implies any obscene or objectionable words or abbreviations.

Source: Laws 1994, LB 886, § 11; Laws 1996, LB 1044, § 544; Laws 2007, LB296, § 441.
Operative date July 1, 2007.

71-641 Birth certificates; without given name; legal change of name; procedure. (1) Until the registrant's seventh birthday, the given name, for a child whose birth was recorded without a given name, may be added based upon an affidavit signed by (a) both parents, (b) the mother in the case of a child born out of wedlock or the death or incapacity of the father, (c) the father in the case of the death or incapacity of the mother, or (d) the guardian or agency having legal custody of the registrant in the case of the death or incapacity of both parents. A certificate amended in this manner prior to the first birthday shall not be marked amended.

(2) After the seventh birthday, one or more items of documentary evidence must be submitted to substantiate the name being added.

(3) For a legal change of name, a certified copy of the court order changing the name must be presented to the department along with data to identify the birth certificate and a request that it be amended to show the new name.

Source: Laws 1971, LB 245, § 8; Laws 1997, LB 307, § 166; Laws 2007, LB296, § 442.
Operative date July 1, 2007.

71-644 Birth or death certificate; amendment; requirements. A certificate or report that is amended under sections 71-635 to 71-644 shall indicate that it has been amended as provided by rules and regulations of the department. A record shall be maintained which identifies the evidence upon which the amendment was based, the date of the amendment, and the identity of the person making the amendment.

Source: Laws 1971, LB 245, § 11; Laws 1985, LB 42, § 24; Laws 1992, LB 1019, § 59; Laws 1994, LB 886, § 13; Laws 1996, LB 1044, § 545; Laws 2007, LB296, § 443.
Operative date July 1, 2007.

71-645 Birth defects; findings and duties. It is hereby found that the occurrence of malformation or inherited disease at the time of birth is a tragedy for the child, the family, and the community, and a matter of vital concern to the public health. In order to provide for the protection and promotion of the health of the citizens of the state, the department shall have

the responsibility for the implementation and development of scientific investigations and research concerning the causes, methods of prevention, treatment, and cure of birth defects.

Source: Laws 1972, LB 1203, § 1; Laws 1996, LB 1044, § 546; Laws 2007, LB296, § 444.
Operative date July 1, 2007.

71-646 Birth defects; registry; purpose; information released. The department shall establish a birth defects registry for the purpose of initiating and conducting investigations of the causes, mortality, methods of prevention, treatment, and cure of birth defects and allied diseases. Any information released from the registry shall be disclosed as Class I, Class II, Class III, or Class IV data as provided in sections 81-663 to 81-675.

Source: Laws 1972, LB 1203, § 2; Laws 1993, LB 536, § 64; Laws 1996, LB 1044, § 547; Laws 2007, LB296, § 445.
Operative date July 1, 2007.

71-647 Birth defects; department; powers and duties; information released. (1) The department shall have and may exercise the following powers and duties:

(a) To conduct scientific investigations and surveys of the causes, mortality, methods of prevention, treatment, and cure of birth defects;

(b) To publish at least annually the results of such investigations and surveys for the benefit of the public health and to annually collate such publications for distribution to scientific organizations and qualified scientists and physicians;

(c) To carry on programs of professional education and training of medical students, physicians, nurses, scientists, and technicians in the causes, methods of prevention, treatment, and cure of birth defects;

(d) To conduct and support clinical counseling services in medical facilities; and

(e) To secure necessary scientific, educational, training, technical, administrative, and operational personnel and services including laboratory facilities by contract or otherwise from public or private entities in order to carry out the purposes of this section.

(2) Any information released from the birth defects registry shall be disclosed as Class I, Class II, Class III, or Class IV data as provided in sections 81-663 to 81-675.

Source: Laws 1972, LB 1203, § 3; Laws 1993, LB 536, § 65; Laws 1996, LB 1044, § 548; Laws 2007, LB296, § 446.
Operative date July 1, 2007.

71-648 Birth defects; reports. Birth defects and allied diseases shall be reported by physicians, hospitals, and persons in attendance at births in the manner and on such forms as may be prescribed by the department. Such reports may be included in the monthly report to the department on births as required by section 71-610. Such reports shall be forwarded to the department no later than the tenth day of the succeeding month after the birth. When objection is made by either parent to furnishing information relating to the medical and health condition of a live-born child because of conflict with religion, such information shall not be required to be entered as provided in this section.

Source: Laws 1972, LB 1203, § 4; Laws 1992, LB 1019, § 60; Laws 1993, LB 536, § 66; Laws 1996, LB 1044, § 549; Laws 2007, LB296, § 447.
Operative date July 1, 2007.

Cross Reference

Medically handicapped child, report of birth, see section 71-1405.

ARTICLE 7

WOMEN'S HEALTH

Section.

- 71-701. Women's Health Initiative of Nebraska; created; duties.
- 71-702. Women's Health Initiative Advisory Council; created; members; terms; duties; expenses.
- 71-703. Initiative; personnel; administrative support.
- 71-705. Women's Health Initiative Fund; created; use; investment.
- 71-706. Department of Health and Human Services; powers.
- 71-707. Report.

71-701 Women's Health Initiative of Nebraska; created; duties. The Women's Health Initiative of Nebraska is created within the Department of Health and Human Services. The Women's Health Initiative of Nebraska shall strive to improve the health of women in Nebraska by fostering the development of a comprehensive system of coordinated services, policy development, advocacy, and education. The initiative shall:

- (1) Serve as a clearinghouse for information regarding women's health issues, including pregnancy, breast and cervical cancers, acquired immunodeficiency syndrome, osteoporosis, menopause, heart disease, smoking, and mental health issues as well as other issues that impact women's health, including substance abuse, domestic violence, teenage pregnancy, sexual assault, adequacy of health insurance, access to primary and preventative health care, and rural and ethnic disparities in health outcomes;
- (2) Perform strategic planning within the Department of Health and Human Services to develop department-wide plans for implementation of goals and objectives for women's health;
- (3) Conduct department-wide policy analysis on specific issues related to women's health;
- (4) Coordinate pilot projects and planning projects funded by the state that are related to women's health;
- (5) Communicate and disseminate information and perform a liaison function within the department and to providers of health, social, educational, and support services to women;
- (6) Provide technical assistance to communities, other public entities, and private entities for initiatives in women's health, including, but not limited to, community health assessment and strategic planning and identification of sources of funding and assistance with writing of grants; and

(7) Encourage innovative responses by public and private entities that are attempting to address women's health issues.

Source: Laws 2000, LB 480, § 1; Laws 2005, LB 301, § 30; Laws 2007, LB296, § 448.
Operative date July 1, 2007.

71-702 Women's Health Initiative Advisory Council; created; members; terms; duties; expenses. (1) The Women's Health Initiative Advisory Council is created and shall consist of not more than thirty members, at least three-fourths of whom are women. At least one member shall be appointed from the following disciplines: (a) An obstetrician/gynecologist; (b) a nurse practitioner or physician's assistant from a rural community; (c) a geriatrics physician or nurse; (d) a pediatrician; (e) a community public health representative from each congressional district; (f) a health educator; (g) an insurance industry representative; (h) a mental health professional; (i) a representative from a statewide health volunteer agency; (j) a private health care industry representative; (k) an epidemiologist or a health statistician; (l) a foundation representative; and (m) a woman who is a health care consumer from each of the following age categories: Eighteen to thirty; thirty-one to forty; forty-one to sixty-five; and sixty-six and older. The membership shall also include a representative of the University of Nebraska Medical Center, a representative from Creighton University Medical Center, the executive director of the Nebraska Commission on the Status of Women or his or her designee, the chief medical officer if one is appointed under section 81-3115, and the Title V Director of the Department of Health and Human Services.

(2) The Governor shall appoint advisory council members and shall consider and attempt to balance representation based on political party affiliation, race, and different geographical areas of Nebraska when making appointments. The Governor shall appoint the first chairperson and vice-chairperson of the advisory council. There shall be two ex officio, nonvoting members from the Legislature, one of which shall be the chairperson of the Health and Human Services Committee.

(3) The terms of the initial members shall be as follows: One-third shall serve for one-year terms, one-third shall serve for two-year terms, and one-third shall serve for three-year terms including the members designated chairperson and vice-chairperson. Thereafter members shall serve for three-year terms. Members may not serve more than two consecutive three-year terms.

(4) The Governor shall make the appointments within three months after July 13, 2000.

(5) The advisory council shall meet quarterly the first two years. After this time the advisory council shall meet at least every six months or upon the call of the chairperson or a majority of the voting members. A quorum shall be one-half of the voting members.

(6) The members of the advisory council shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177 and pursuant to policies of the advisory council. Funds for reimbursement for expenses shall be from the Women's Health Initiative Fund.

(7) The advisory council shall advise the Women's Health Initiative of Nebraska in carrying out its duties under section 71-701 and may solicit private funds to support the initiative.

(8) The advisory council terminates on December 31, 2009.

Source: Laws 2000, LB 480, § 2; Laws 2004, LB 818, § 1; Laws 2007, LB296, § 449.
Operative date July 1, 2007.
Termination date December 31, 2009.

71-703 Initiative; personnel; administrative support. The Department of Health and Human Services will determine how the department will provide personnel to carry out the Women's Health Initiative of Nebraska. The department shall employ personnel, including an executive director, necessary to carry out the powers and duties of the initiative. The Governor's Policy Research Office, the department, and other state agencies as necessary may provide administrative and technical support under the direct supervision of the Governor. The initiative may secure cooperation and assistance of other appropriate government and private-sector entities for women's health issues, programs, and educational materials.

Source: Laws 2000, LB 480, § 3; Laws 2005, LB 301, § 31; Laws 2007, LB296, § 450.
Operative date July 1, 2007.

71-705 Women's Health Initiative Fund; created; use; investment. The Women's Health Initiative Fund is created. The fund shall consist of money received as gifts or grants or collected as fees or charges from any federal, state, public, or private source. Money in the fund shall be used to reimburse the expenses of the Women's Health Initiative of Nebraska and expenses of members of the Women's Health Initiative Advisory Council. Nothing in sections 71-701 to 71-707 requires the Women's Health Initiative of Nebraska to accept any private donations that are not in keeping with the goals and objectives set forth by the initiative and the Department of Health and Human Services. No funds expended or received by or through the initiative shall pay for abortion referral or abortion services. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2000, LB 480, § 5; Laws 2005, LB 301, § 32; Laws 2007, LB296, § 451.
Operative date July 1, 2007.

Cross Reference

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-706 Department of Health and Human Services; powers. The Department of Health and Human Services shall have all powers necessary to implement the purposes and intent of sections 71-701 to 71-707, including applying for, receiving, and administering federal and other public and private funds credited to the Women's Health Initiative Fund. Any funds obtained for the Women's Health Initiative of Nebraska shall be remitted to the State Treasurer for credit to the Women's Health Initiative Fund.

Source: Laws 2000, LB 480, § 6; Laws 2005, LB 301, § 33; Laws 2007, LB296, § 452.
Operative date July 1, 2007.

71-707 Report. The Department of Health and Human Services shall issue an annual report to the Governor and the Legislature on September 1 for the preceding fiscal year's activities of the Women's Health Initiative of Nebraska. The report shall include progress reports on any programs, activities, or educational promotions that were undertaken by the initiative. The report shall also include a status report on women's health in Nebraska and any results achieved by the initiative.

Source: Laws 2000, LB 480, § 7; Laws 2005, LB 301, § 34; Laws 2007, LB296, § 453.
Operative date July 1, 2007.

ARTICLE 8

BEHAVIORAL HEALTH SERVICES

Section.

- 71-804. Terms, defined.
- 71-805. Division; personnel; office of consumer affairs.
- 71-806. Division; powers and duties; rules and regulations.
- 71-809. Regional behavioral health authority; behavioral health services; powers and duties.
- 71-811. Division; funding; powers and duties.
- 71-812. Behavioral Health Services Fund; created; use; investment.
- 71-814. State Advisory Committee on Mental Health Services; created; members; duties.

71-804 Terms, defined. For purposes of the Nebraska Behavioral Health Services Act:

- (1) Behavioral health disorder means mental illness or alcoholism, drug abuse, problem gambling, or other addictive disorder;
- (2) Behavioral health region means a behavioral health region established in section 71-807;
- (3) Behavioral health services means services, including, but not limited to, consumer-provided services, support services, inpatient and outpatient services, and residential and nonresidential services, provided for the prevention, diagnosis, and treatment of behavioral health disorders and the rehabilitation and recovery of persons with such disorders;
- (4) Community-based behavioral health services or community-based services means behavioral health services that are not provided at a regional center;
- (5) Department means the Department of Health and Human Services;
- (6) Director means the Director of Behavioral Health;
- (7) Division means the Division of Behavioral Health of the department;
- (8) Medical assistance program means the program established pursuant to the Medical Assistance Act;
- (9) Public behavioral health system means the statewide array of behavioral health services for children and adults provided by the public sector or private sector and supported in whole or in part with funding received and administered by the department, including behavioral health services provided under the medical assistance program;

(10) Regional center means one of the state hospitals for the mentally ill designated in section 83-305; and

(11) Regional center behavioral health services or regional center services means behavioral health services provided at a regional center.

Source: Laws 2004, LB 1083, § 4; Laws 2006, LB 1248, § 74; Laws 2007, LB296, § 454.
Operative date July 1, 2007.

Cross Reference

Medical Assistance Act, see section 68-901.

71-805 Division; personnel; office of consumer affairs. (1) The director shall appoint a chief clinical officer and a program administrator for consumer affairs for the division. The chief clinical officer shall be a board-certified psychiatrist and shall serve as the medical director for the division and all facilities and programs operated by the division. The program administrator for consumer affairs shall be a consumer or former consumer of behavioral health services and shall have specialized knowledge, experience, or expertise relating to consumer-directed behavioral health services, behavioral health delivery systems, and advocacy on behalf of consumers of behavioral health services and their families. The chief clinical officer and the program administrator for consumer affairs shall report to the director. The Governor and the director shall conduct a search for qualified candidates and shall solicit and consider recommendations from interested parties for such positions prior to making such appointments.

(2) The director shall establish and maintain an office of consumer affairs within the division. The program administrator for consumer affairs shall be responsible for the administration and management of the office.

Source: Laws 2004, LB 1083, § 5; Laws 2007, LB296, § 455.
Operative date July 1, 2007.

71-806 Division; powers and duties; rules and regulations. (1) The division shall act as the chief behavioral health authority for the State of Nebraska and shall direct the administration and coordination of the public behavioral health system, including, but not limited to: (a) Administration and management of the division, regional centers, and any other facilities and programs operated by the division; (b) integration and coordination of the public behavioral health system; (c) comprehensive statewide planning for the provision of an appropriate array of community-based behavioral health services and continuum of care; (d) coordination and oversight of regional behavioral health authorities, including approval of regional budgets and audits of regional behavioral health authorities; (e) development and management of data and information systems; (f) prioritization and approval of all expenditures of funds received and administered by the division, including the establishment of rates to be paid and reimbursement methodologies for behavioral health services and fees to be paid by consumers of such services; (g) cooperation with the department in the licensure

and regulation of behavioral health professionals, programs, and facilities; (h) cooperation with the department in the provision of behavioral health services under the medical assistance program; (i) audits of behavioral health programs and services; and (j) promotion of activities in research and education to improve the quality of behavioral health services, recruitment and retention of behavioral health professionals, and access to behavioral health programs and services.

(2) The department shall adopt and promulgate rules and regulations to carry out the Nebraska Behavioral Health Services Act.

Source: Laws 2004, LB 1083, § 6; Laws 2006, LB 1248, § 75; Laws 2007, LB296, § 456.
Operative date July 1, 2007.

71-809 Regional behavioral health authority; behavioral health services; powers and duties. (1) Each regional behavioral health authority shall be responsible for the development and coordination of publicly funded behavioral health services within the behavioral health region pursuant to rules and regulations adopted and promulgated by the department, including, but not limited to, (a) administration and management of the regional behavioral health authority, (b) integration and coordination of the public behavioral health system within the behavioral health region, (c) comprehensive planning for the provision of an appropriate array of community-based behavioral health services and continuum of care for the region, (d) submission for approval by the division of an annual budget and a proposed plan for the funding and administration of publicly funded behavioral health services within the region, (e) submission of annual reports and other reports as required by the division, (f) initiation and oversight of contracts for the provision of publicly funded behavioral health services, and (g) coordination with the division in conducting audits of publicly funded behavioral health programs and services.

(2) Except for services being provided by a regional behavioral health authority on July 1, 2004, under applicable state law in effect prior to such date, no regional behavioral health authority shall provide behavioral health services funded in whole or in part with revenue received and administered by the division under the Nebraska Behavioral Health Services Act unless:

- (a) There has been a public competitive bidding process for such services;
- (b) There are no qualified and willing providers to provide such services; and
- (c) The regional behavioral health authority receives written authorization from the director and enters into a contract with the division to provide such services.

(3) Each regional behavioral health authority shall comply with all applicable rules and regulations of the department relating to the provision of behavioral health services by such authority, including, but not limited to, rules and regulations which (a) establish definitions of conflicts of interest for regional behavioral health authorities and procedures in the event such conflicts arise, (b) establish uniform and equitable public bidding procedures for such services, and (c) require each regional behavioral health authority to establish and maintain a separate budget and separately account for all revenue and expenditures for the provision of such services.

Source: Laws 2004, LB 1083, § 9; Laws 2007, LB296, § 457.
Operative date July 1, 2007.

71-811 Division; funding; powers and duties. The division shall coordinate the integration and management of all funds appropriated by the Legislature or otherwise received by the department from any other public or private source for the provision of behavioral health services to ensure the statewide availability of an appropriate array of community-based behavioral health services and continuum of care and the allocation of such funds to support the consumer and his or her plan of treatment.

Source: Laws 2004, LB 1083, § 11; Laws 2007, LB296, § 458.
Operative date July 1, 2007.

71-812 Behavioral Health Services Fund; created; use; investment. (1) The Behavioral Health Services Fund is created. The fund shall be administered by the division and shall contain cash funds appropriated by the Legislature or otherwise received by the department for the provision of behavioral health services from any other public or private source and directed by the Legislature for credit to the fund.

(2) The fund shall be used to encourage and facilitate the statewide development and provision of community-based behavioral health services, including, but not limited to, (a) the provision of grants, loans, and other assistance for such purpose and (b) reimbursement to providers of such services.

(3)(a) Money transferred to the fund under section 76-903 shall be used for housing-related assistance for very low-income adults with serious mental illness, except that if the division determines that all housing-related assistance obligations under this subsection have been fully satisfied, the division may distribute any excess, up to twenty percent of such money, to regional behavioral health authorities for acquisition or rehabilitation of housing to assist such persons. The division shall manage and distribute such funds based upon a formula established by the division, in consultation with regional behavioral health authorities and the department, in a manner consistent with and reasonably calculated to promote the purposes of the public behavioral health system enumerated in section 71-803. The division shall contract with each regional behavioral health authority for the provision of such assistance. Each regional behavioral health authority may contract with qualifying public, private, or nonprofit entities for the provision of such assistance.

(b) For purposes of this subsection:

(i) Adult with serious mental illness means a person eighteen years of age or older who has, or at any time during the immediately preceding twelve months has had, a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders and which has resulted in functional impairment that substantially interferes with or limits one or more major life functions. Serious mental illness does not include DSM V codes, substance

abuse disorders, or developmental disabilities unless such conditions exist concurrently with a diagnosable serious mental illness;

(ii) Housing-related assistance includes rental payments, utility payments, security and utility deposits, and other related costs and payments; and

(iii) Very low-income means a household income of fifty percent or less of the applicable median family income estimate as established by the United States Department of Housing and Urban Development.

(4) Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2004, LB 1083, § 12; Laws 2005, LB 40, § 5; Laws 2007, LB296, § 459.
Operative date July 1, 2007.

Cross Reference

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

71-814 State Advisory Committee on Mental Health Services; created; members; duties. (1) The State Advisory Committee on Mental Health Services is created. Members of the committee shall have a demonstrated interest and commitment and specialized knowledge, experience, or expertise relating to the provision of mental health services in the State of Nebraska. The committee shall consist of twenty-three members appointed by the Governor as follows: (a) One regional governing board member, (b) one regional administrator, (c) twelve consumers of behavioral health services or their family members, (d) two providers of behavioral health services, (e) two representatives from the State Department of Education, including one representative from the Division of Vocational Rehabilitation of the State Department of Education, (f) three representatives from the Department of Health and Human Services representing mental health, social services, and medicaid, (g) one representative from the Nebraska Commission on Law Enforcement and Criminal Justice, and (h) one representative from the Housing Office of the Community and Rural Development Division of the Department of Economic Development.

(2) The committee shall be responsible to the division and shall (a) serve as the state's mental health planning council as required by Public Law 102-321, (b) conduct regular meetings, (c) provide advice and assistance to the division relating to the provision of mental health services in the State of Nebraska, including, but not limited to, the development, implementation, provision, and funding of organized peer support services, (d) promote the interests of consumers and their families, including, but not limited to, their inclusion and involvement in all aspects of services design, planning, implementation, provision, education, evaluation, and research, (e) provide reports as requested by the division, and (f) engage in such other activities as directed or authorized by the division.

Source: Laws 2004, LB 1083, § 14; Laws 2006, LB 994, § 93; Laws 2007, LB296, § 460.
Operative date July 1, 2007.

ARTICLE 9

NEBRASKA MENTAL HEALTH COMMITMENT ACT

Section.

- 71-906. Mental health professional, defined.
- 71-916. Mental health board; training; department; duties.
- 71-919. Mentally ill and dangerous person; dangerous sex offender; emergency protective custody; evaluation by mental health professional.
- 71-961. Subject's records; confidential; exceptions.

71-906 Mental health professional, defined. Mental health professional means a person licensed to practice medicine and surgery or psychology in this state under the Uniform Credentialing Act or an advanced practice registered nurse licensed under the Advanced Practice Registered Nurse Practice Act who has proof of current certification in a psychiatric or mental health specialty.

Source: Laws 1976, LB 806, § 10; Laws 1991, LB 10, § 6; Laws 1994, LB 1210, § 159; R.S.1943, (1999), § 83-1010; Laws 2004, LB 1083, § 26; Laws 2005, LB 534, § 1; Laws 2007, LB463, § 1185. Operative date December 1, 2008.

Cross Reference

Advanced Practice Registered Nurse Practice Act, see section 38-201.

Uniform Credentialing Act, see section 38-101.

71-916 Mental health board; training; department; duties. (1) The Department of Health and Human Services shall provide appropriate training to members and alternate members of each mental health board and shall consult with consumer and family advocacy groups in the development and presentation of such training. Members and alternate members shall be reimbursed for any actual and necessary expenses incurred in attending such training in a manner and amount determined by the presiding judge of the district court. No person shall remain on a mental health board or be eligible for appointment or reappointment as a member or alternate member of such board unless he or she has attended and satisfactorily completed such training pursuant to rules and regulations adopted and promulgated by the department.

(2) The department shall provide the mental health boards with blanks for warrants, certificates, and other forms and printed copies of applicable rules and regulations of the department that will enable the boards to carry out their powers and duties under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act.

Source: Laws 2004, LB 1083, § 36; Laws 2006, LB 1199, § 35; Laws 2007, LB296, § 461. Operative date July 1, 2007.

Cross Reference

Sex Offender Commitment Act, see section 71-1201.

71-919 Mentally ill and dangerous person; dangerous sex offender; emergency protective custody; evaluation by mental health professional. (1) A law enforcement officer who has probable cause to believe that a person is mentally ill and dangerous or a dangerous sex offender and that the harm described in section 71-908 or subdivision (1) of section 83-174.01 is likely to occur before mental health board proceedings under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act may be initiated to obtain custody of the person may take such person into emergency protective custody, cause him or her to be taken into emergency protective custody, or continue his or her custody if he or she is already in custody. Such person shall be admitted to an appropriate and available medical facility, jail, or Department of Correctional Services facility as provided in subsection (2) of this section. Each county shall make arrangements with appropriate facilities inside or outside the county for such purpose and shall pay the cost of the emergency protective custody of persons from such county in such facilities. A mental health professional who has probable cause to believe that a person is mentally ill and dangerous or a dangerous sex offender may cause such person to be taken into custody and shall have a limited privilege to hold such person until a law enforcement officer or other authorized person arrives to take custody of such person.

(2)(a) A person taken into emergency protective custody under this section shall be admitted to an appropriate and available medical facility unless such person has a prior conviction for a sex offense listed in section 29-4003.

(b) A person taken into emergency protective custody under this section who has a prior conviction for a sex offense listed in section 29-4003 shall be admitted to a jail or Department of Correctional Services facility unless a medical or psychiatric emergency exists for which treatment at a medical facility is required. The person in emergency protective custody shall remain at the medical facility until the medical or psychiatric emergency has passed and it is safe to transport such person, at which time the person shall be transferred to an available jail or Department of Correctional Services facility.

(3) Upon admission to a facility of a person taken into emergency protective custody by a law enforcement officer under this section, such officer shall execute a written certificate prescribed and provided by the Department of Health and Human Services. The certificate shall allege the officer's belief that the person in custody is mentally ill and dangerous or a dangerous sex offender and shall contain a summary of the person's behavior supporting such allegations. A copy of such certificate shall be immediately forwarded to the county attorney.

(4) The administrator of the facility shall have such person evaluated by a mental health professional as soon as reasonably possible but not later than thirty-six hours after admission. The mental health professional shall not be the mental health professional who causes such person to be taken into custody under this section and shall not be a member or alternate member of the mental health board that will preside over any hearing under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act with respect to such person. A person shall be released from emergency protective custody after completion of

such evaluation unless the mental health professional determines, in his or her clinical opinion, that such person is mentally ill and dangerous or a dangerous sex offender.

Source: Laws 1976, LB 806, § 30; Laws 1978, LB 501, § 2; Laws 1988, LB 257, § 2; Laws 1996, LB 1044, § 964; Laws 1996, LB 1155, § 95; R.S.1943, (1999), § 83-1020; Laws 2004, LB 1083, § 39; Laws 2006, LB 1199, § 38; Laws 2007, LB296, § 462.
Operative date July 1, 2007.

Cross Reference

Sex Offender Commitment Act, see section 71-1201.

71-961 Subject's records; confidential; exceptions. (1) All records kept on any subject shall remain confidential except as otherwise provided by law. Such records shall be accessible to (a) the subject, except as otherwise provided in subsection (2) of this section, (b) the subject's legal counsel, (c) the subject's guardian or conservator, if any, (d) the mental health board having jurisdiction over the subject, (e) persons authorized by an order of a judge or court, (f) persons authorized by written permission of the subject, (g) agents or employees of the Department of Health and Human Services upon delivery of a subpoena from the department in connection with a licensing or licensure investigation by the department, (h) individuals authorized to receive notice of the release of a sex offender pursuant to section 83-174, (i) the Nebraska State Patrol or the department pursuant to section 69-2409.01, or (j) the Office of Parole Administration if the subject meets the requirements for lifetime community supervision pursuant to section 83-174.03.

(2) Upon application by the county attorney or by the administrator of the treatment facility where the subject is in custody and upon a showing of good cause therefor, a judge of the district court of the county where the mental health board proceedings were held or of the county where the treatment facility is located may order that the records not be made available to the subject if, in the judgment of the court, the availability of such records to the subject will adversely affect his or her mental illness or personality disorder and the treatment thereof.

(3) When a subject is absent without authorization from a treatment facility or program described in section 71-939 or 71-1223 and is considered to be dangerous to others, the subject's name and description and a statement that the subject is believed to be considered dangerous to others may be disclosed in order to aid in the subject's apprehension and to warn the public of such danger.

Source: Laws 1976, LB 806, § 78; Laws 1996, LB 1055, § 17; Laws 1996, LB 1155, § 111; Laws 1997, LB 307, § 230; R.S.1943, (1999), § 83-1068; Laws 2004, LB 1083, § 81; Laws 2006, LB 1199, § 52; Laws 2007, LB296, § 463.
Operative date July 1, 2007.